

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE  
4 RICHARD BOEKEN, )  
5 PLAINTIFF, )  
6 )  
7 ) CASE NO. BC226593  
8 VS. )  
9 PHILIP MORRIS, )  
INCORPORATED, A )  
10 CORPORATION; INTERNATIONAL )  
HOUSE OF PANCAKES )  
11 INCORPORATED, A )  
CORPORATION.  
12 )  
DEFENDANTS. )  
13 \_\_\_\_\_)  
14 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
15 THURSDAY, APRIL 19TH, 2001  
16 APPEARANCES:  
17 (FOR PLAINTIFF) LAW OFFICES OF  
MICHAEL J. PIUZE  
18 11755 WILSHIRE BLVD.  
SUITE 1170  
19 LOS ANGELES, CA 90025  
20 (FOR DEFENDANTS) ARNOLD & PORTER  
BY: MAURICE A. LEITER  
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23  
LISA C. RIDLEY  
24 OFFICIAL REPORTER  
600 S. COMMONWEALTH AVE.  
25 ROOM 308  
LOS ANGELES, CA 90005  
26  
VOLUME 20B OF  
27 26 PAGES 3054 THROUGH 3165  
28  
3054  
1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 19TH, 2001  
2 1:30 P.M.  
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE  
4  
5 (THE FOLLOWING PROCEEDINGS  
6 WERE HELD IN OPEN COURT OUT  
7 OF THE PRESENCE OF THE JURY:)  
8  
9 THE COURT: WE ARE ON THE RECORD OUTSIDE  
10 THE PRESENCE.  
11 I HAVE READ THE TRANSCRIPT OF THE  
12 CROSS-EXAMINATION OF THE WITNESS AND THE, WHAT WE  
13 ARE TALKING ABOUT IS 721.3, OR (B)3, PUBLICATION  
14 HAS BEEN ESTABLISHED AS A RELIABLE AUTHORITY BY THE  
15 TESTIMONY FOR ADMISSION OF THE WITNESS.  
16 AND IT GOES ON BUT IT IS THAT FIRST  
17 PART THAT COUNTS HERE. AND TESTIMONY THUS FAR HAS  
18 TO DO WITH, THE QUESTION WAS WHETHER OR NOT IT IS A  
19 REPUTABLE JOURNAL IN THE FIELD.  
20 I THINK WHAT THIS STATUTE REQUIRES,

21 IT'S GOT TO BE, WHATEVER MATERIAL IS GOING TO BE  
22 ADVANCED HAS TO BE A RELIABLE AUTHORITY ON THE  
23 SUBJECT MATTER FOR WHICH IT IS ADVANCED. THAT IS  
24 THE STANDARD, I WOULD SAY, THE STATUTE IS LOOKING  
25 FOR.

26 AND I WOULD GIVE COUNSEL A FAIR  
27 OPPORTUNITY IN THE PRESENCE OF THE JURY TO GO AHEAD  
28 AND ATTEMPT TO ESTABLISH THAT BASIS. AND IF IT CAN  
3055

1 BE ESTABLISHED THROUGH THE TESTIMONY OF THIS  
2 WITNESS, THEN YOU MAY WELL BE ABLE TO USE THE  
3 MATERIAL.

4 MR. LEITER: ALL RIGHT. THANK YOU, YOUR  
5 HONOR.

6 THE COURT: AND I WILL MAKE THE JUDGMENT.

7 MR. PIUZE: YOU WANT TO DO THAT NOW?

8 THE COURT: WE ARE GOING TO DO IT IN THE  
9 PRESENCE OF THE JURY.

10 MR. PIUZE: THAT'S WHAT I THOUGHT.

11 I HAVE THE SECOND ISSUE, THE ONES  
12 THAT WE DISCUSSED, SO THAT I CAN NOW PRESENT IT IN  
13 A TOTALLY DISPASSIONATE AND ACADEMIC SENSE RATHER  
14 THAN WHAT MY TRIAL LAWYERS CHOOSES.

15 THE COURT: IT WASN'T AN EASY QUESTION, I  
16 KNEW IN ASKING IT, IT WOULD NOT BE AN EASY QUESTION  
17 TO ANSWER.

18 MR. PIUZE: GOOD QUESTION. I HAVE A GOOD  
19 ANSWER.

20 THE COURT: LET'S HEAR IT.

21 MR. PIUZE: I DIDN'T, THE UNITED STATES  
22 SUPREME COURT HAD A GOOD ANSWER.

23 THE NAME OF THE CASE IS B.M.W.

24 NORTH AMERICA VERSUS GORR, 116 SUPREME COURT, 1589,  
25 DISCUSSION OCCURS AT PAGE 1598, GENERALLY. AND IN  
26 TWO FOOTNOTES, 20 AND 21 SPECIFICALLY, IN WHICH THE  
27 UNITED STATES SUPREME COURT, BOTTOM LINE SAYS, "OUT  
28 OF STATE CONDUCT AND EVIDENCE OF OUT OF STATE  
3056

1 CONDUCT IS RELEVANT ON THE ISSUE OF  
2 REPREHENSIBILITY." THAT'S A 1996 CASE, AS WELL AS  
3 THE U.S. SUPREME COURT'S LAST PRONOUNCEMENTS ON  
4 PUNITIVE DAMAGES.

5 I FLUSHED THAT OUT AS FOLLOWS, YOUR  
6 HONOR.

7 IN CALIFORNIA, THE CASE THAT GIVES  
8 US THE BAJI INSTRUCTION FOR PUNITIVE DAMAGES, NEAL  
9 VERSUS FARMERS.

10 NEAL VERSUS FARMERS IS TO 1 CAL  
11 3RD, 910 AT 923. IT'S A 1978 CASE AND IT IS CITED  
12 IN BAJI FOR THE THREE TRIPLE APPROACH TO PUNITIVE  
13 DAMAGES, ONE HAVING TO DO WITH DETERRENCE, ONE  
14 HAVING TO DO WITH REPREHENSIBILITY.

15 SO THEIR CONDUCT IS REPREHENSIBLE.

16 IT'S UP TO ME. IT'S MY BURDEN, BY CLEAR AND  
17 CONVINCING EVIDENCE. AND IF THIS IS 5149, CLEAR  
18 AND CONVINCING IS SOMEPLACE BETWEEN THAT AND 100.

19 IT'S UP TO ME, BY CLEAR AND CONVINCING EVIDENCE, TO  
20 SHOW THE REPREHENSIBILITY OF THEIR CONDUCT.

21 NOW, I CAN SHOW THE

22 REPREHENSIBILITY OF THEIR CONDUCT. I CAN SHOW

23 THAT IT IS DESPICABLE. I CAN SHOW INTENT. I CAN

24 SHOW THEIR MINDSET, BECAUSE THEY KNOW THE HARM THAT  
25 THEY ARE CAUSING NOW. THERE IS NO DOUBT. THEY PUT

26 ON THEIR WEB SITE THAT THIS STUFF IS ADDICTIVE AND  
27 PUT ON THEIR WEB SITE THAT THIS STUFF CAUSES LUNG  
28 CANCER.

3057

1 AND DESPITE THE FACT THAT THEY HAVE  
2 ADMITTED THEY KNOW THIS, THEY ARE NOW INCREASING,  
3 AND THIS WITNESS IS ABLE TO SAY IT, THEIR SALES  
4 OVERSEAS AND NOT ONLY THAT, BUT THEY ARE INCREASING  
5 THEIR SALES IN COUNTRIES WHERE THERE ARE NO  
6 WARNINGS OF ANY KIND AND THEY KNOW THAT.  
7 THIS GOES DIRECTLY TO  
8 REPREHENSIBLALITY.  
9 AND YOUR HONOR, I WILL TELL YOU  
10 WHERE I COULD ALSO GO, IF ALLOWED TO, AND THIS,  
11 ALTHOUGH THIS IS ON MY SHOPPING LIST, THIS ISN'T  
12 THE MAJOR ITEM.  
13 THE UNITED STATES OF AMERICA, IN  
14 COMING TO TRADE AGREEMENTS WITH SEVERAL MAJOR  
15 COUNTRIES, SUCH AS JAPAN AND CHINA AND THAILAND AND  
16 OTHERS, HAS PUT THE WEIGHT OF OUR GOVERNMENT BEHIND  
17 A PROPOSITION THAT THERE SHOULD BE MINIMAL  
18 RESTRICTIONS TO ADVERTISING AND MINIMAL  
19 RESTRICTIONS TO SALES OF CIGARETTES OVERSEAS.  
20 SO, YOU KNOW, THAT'S AN AREA WHERE  
21 IF I WERE A JUDGE, I WOULD BE THINKING 352 AND I  
22 ACKNOWLEDGE IT.  
23 THE COURT: IT'S WAY BEYOND 352. THAT IS  
24 A DIFFERENT TRIAL, A DIFFERENT PLACE.  
25 MR. PIUZE: SO BE IT. SO I SAID IT, I  
26 SAID IT AND I AM NOT ADVOCATING IT.  
27 BUT THE U.S. SUPREME COURT SAYS,  
28 WHEN B.M.W. ARGUES, WE SHOULD NOT BE TALKING ABOUT  
3058

1 CONDUCT THAT OCCURS BEYOND THE STATE IN WHICH THE  
2 CONDUCT OCCURRED AND IN WHICH THE PUNITIVE DAMAGES  
3 ARE SOUGHT, THE UNITED STATES SUPREME COURT SAYS,  
4 WRONG. AND IT FLAT OUT SAYS, OUT OF STATE EVIDENCE  
5 IS RELEVANT ON THE ISSUE OF REPREHENSIBLALITY.  
6 NOW, BECAUSE THIS MAY BE MY ONLY  
7 SHOT, AND THIS IS A BIG DEAL TO ME, I WILL JUST  
8 READ THIS FOR THE RECORD.  
9 ONE FACTOR INFLUENCING THE  
10 DEGREE OF REPREHENSIBLALITY IS THE  
11 NUMBER OF PERSONS AFFECTED BY PHILIP  
12 MORRIS'S WRONGFUL CONDUCT. HERE'S A  
13 QUOTE. "ONE MEASURE OF A PARTY'S  
14 CULPABILITY IS THE NUMBER OF PERSONS  
15 AFFECTED BY THE ARRANT CONDUCT.  
16 CITING, DELOS, D-E-L-O-S, VERSUS  
17 FARMERS, 1979, 93 CAL APP 3RD, 642 AND  
18 667. MOORE VERSUS AMERICAN UNITED  
19 LIFE, 1984, 150 CAL APP 3RD, 610, A  
20 DISCUSSION AT 637 THROUGH 638. DOWNEY  
21 SAVING AND LOAN ASSOCIATION VERSUS  
22 OHIO CASUALTY, 1987, 189 CAL APP 3RD,  
23 1072 AT 1098.  
24 OVERSEAS SALES IN CANCER  
25 AIDS ESTABLISH THAT MR. BOEKEN WAS NOT  
26 THE ONLY CONSUMER AFFECTED BY THEIR  
27 WRONGFUL CONDUCT. THE EVIDENCE IS  
28 DIRECTLY RELEVANT ON THE ISSUE OF  
3059  
1 REPREHENSIBLALITY.

2 EVIDENCE THAT OTHER  
3 CONSUMERS HAVE BEEN VICTIMIZED BY  
4 PHILIP MORRIS'S PRACTICE IS RELEVANT  
5 ON THE EVIDENCE OF PATTERN AND  
6 PRACTICE OF CORPORATE WRONGDOING,  
7 CITING NEAL, AND ALSO CITING COLONIAL  
8 LIFE ACCIDENT VERSUS SUPERIOR COURT,  
9 1982, 31 CAL 3RD, 785, THE DISCUSSION  
10 790 TO 792.  
11 THE EVIDENCE I WANT TO PUT  
12 ON SHOWS A CONSCIOUS DISREGARD FOR  
13 CONSUMER SAFETY COMPARED TO HILLIARD  
14 VERSUS A. H. ROBBINS, 1983, WHICH I  
15 PREVIOUSLY CITED TO THE COURT, 148 CAL  
16 APP 3RD, 374, 399. THE QUOTES FROM  
17 THAT AND I AM DONE.  
18 EVIDENCE THAT ROBBINS FAILED  
19 TO ADEQUATELY TEST THE DALCON SHIELD  
20 BEFORE MARKETING IT OR DURING  
21 MARKETING IS EVIDENCE THAT ROBBINS  
22 ACTED WITH CONSCIOUS DISREGARD FOR THE  
23 SAFETY OF OTHERS. EVIDENCE THAT  
24 ROBBINS NWAS AWARE OF THE STATE OF THE  
25 ART IN TESTING ON ANIMALS FAILED TO  
26 CONDUCT ADEQUATE ANIMAL TESTING IS  
27 EVIDENCE THAT HAS A TENDENCY IN REASON  
28 THE PROVE THEY HAVE ACTED IN CONSCIOUS  
3060

1 DISREGARD FOR THE SAFETY OF OTHERS.  
2 AND I TOP THAT OFF WITH THE  
3 U.S. SUPREME COURT CASE WHICH ANSWERED  
4 THE COURT'S QUESTION DIRECTLY.  
5 THANK YOU FOR LISTENING TO  
6 ME.  
7 THE COURT: NO, DON'T RUSH THROUGH IT.  
8 WHAT IS THE OFFER OF PROOF?  
9 MR. PIUZE: (READING)  
10 AS CIGARETTE MARKETS SHRINK  
11 IN THE WEST, THE TOBACCO COMPANIES  
12 SEEM DETERMINED TO EXPAND INTO HUGE  
13 POPULATIONS OF THE DEVELOPING WORLD.  
14 U.S. BASED COMPANIES  
15 CURRENTLY SUPPLY ABOUT 20 PERCENT OF  
16 THE NEARLY SIX TRILLION CIGARETTES  
17 SMOKE IN THE WORLD EACH YEAR.  
18 AS LOCAL, STATE AND FEDERAL  
19 ANTI-TOBACCO LAWS HAVE REDUCED SMOKING  
20 BY ALMOST 20 PERCENT, IN THE PAST  
21 DECADE IN THE UNITED STATES, TOBACCO  
22 COMPANIES HAVE INCREASED THEIR EXPORTS  
23 BY 260 PERCENT.  
24 IN 1996, FOR EXAMPLE, THE  
25 TOP TWO CIGARETTE MAKERS IN THE U.S.,  
26 PHILIP MORRIS, AND RJ REYNOLDS, SOLD,  
27 RESPECTIVELY, 70 PERCENT AND 57  
28 PERCENT OF THEIR PRODUCTS OVERSEAS.  
3061

1 EDITORIAL COMMENT, I AM  
2 INTERESTED IN PHILIP MORRIS ONLY NOT  
3 RJ REYNOLDS.  
4 BY 2025, ONLY 15 PERCENT OF  
5 THE WORLD'S SMOKERS WILL LIVE IN  
6 DEVELOPED COUNTRIES, AND IT IS THE

7 DEVELOPING COUNTRIES THAT WILL BEAR  
8 THE BRUNT OF THE TOBACCO EPIDEMIC IN  
9 THE NEXT CENTURY.  
10 BY 2030, THE WORLD HEALTH  
11 ORGANIZATION PREDICTS 10 MILLION  
12 PEOPLE WILL DIE ANNUALLY FROM TOBACCO  
13 RELATED DISEASES, 70 PERCENT IN THE  
14 DEVELOPING WORLD.  
15 AND THE REMAINDER OF THE STUFF  
16 HERE, I THINK, IS OVER THE LINE THAT WE HAVE  
17 ALREADY DISCUSSED, INTO GOVERNMENTAL POLICIES.  
18 THE COURT: WELL, THE BOTTOM LINE, THE  
19 OFFER OF PROOF IS INCREASED EXPORTS. THAT'S REALLY  
20 THE ESSENCE OF THIS EVIDENCE.  
21 MR. PIUZE: ESSENCE OF THE EVIDENCE IS  
22 THAT AS SALES HAVE DECREASED IN THIS COUNTRY, WITH  
23 A CONCOMITANT BEGINNING DECREASE OF LUNG CANCER,  
24 AND A CONCOMITANT BEGINNING OR ABOUT TO BEGIN  
25 DECREASE IN TOBACCO-RELATED DEATHS, GENERALLY, AT  
26 THE SAME TIME TOBACCO SALES HAVE GONE UP OVERSEAS  
27 BY THIS COMPANY, LUNG CANCER RATES HAVE GONE UP  
28 OVERSEAS, SMOKING RELATED DEATHS HAVE GONE UP  
3062

1 OVERSEAS, AND THE WORLD HEALTH ORGANIZATION'S  
2 PREDICTIONS ARE THIS IS A TREND THAT HAS JUST TAKEN  
3 OFF AND IS GOING TO GET TO GIGANTIC PROPORTIONS.

4 THE COURT: I DON'T NEED ANYTHING FROM  
5 YOU RIGHT NOW.

6 IF I NEED SOMETHING, I WILL BE  
7 ASKING FOR IT.

8 OKAY. IF WE COULD BRING OUR JURY  
9 IN, PLEASE.

10  
11 (THE FOLLOWING PROCEEDINGS  
12 WERE HELD IN OPEN COURT IN  
13 THE PRESENCE OF THE JURY.)  
14

15 THE COURT: LADIES AND GENTLEMEN, WE HAD  
16 SOMETHING WE HAD TO DO OUTSIDE YOUR PRESENCE.  
17 THAT'S WHY WE ASKED YOU TO BE PATIENT.

18 SIR, YOU MAY BE SEATED. YOU  
19 UNDERSTAND YOU ARE STILL UNDER OATH?

20 THE WITNESS: I DO.

21 THE COURT: OUR JURY PANEL IS WITH US.

22 MR. CARLTON, YOUR WITNESS, SIR.

23  
24

25 GARY STRAUSS,  
26 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
27 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
28 AND TESTIFIED FURTHER AS FOLLOWS:

3063

1 CROSS-EXAMINATION  
2

3 BY MR. CARLTON:

4 Q. DOCTOR, HAVE YOU HAD A CHANCE TO  
5 GLANCE THROUGH THIS ARTICLE?

6 A. I DID HAVE A CHANCE IN THE LAST FEW  
7 MINUTES.

8 Q. DO YOU RECOGNIZE THE AUTHOR?

9 A. I DON'T.

10 Q. THIS IS, AS I THINK YOU MENTIONED  
11 BEFORE A META-ANALYSIS?

12 A. THAT IS CORRECT.  
13 Q. AND THAT INVOLVES CONGLOMERATING  
14 LOTS OF DIFFERENT ANALYSES INTO ONE?  
15 A. YES, SIR.  
16 Q. DO YOU SEE UNDER THE ABSTRACT THAT  
17 IT SAYS THAT NUMEROUS STUDIES WERE IDENTIFIED  
18 THROUGH MED LINE AND CANCER LIT SEARCHES, RIGHT AT  
19 THE TOP OF THE AD, SIR?  
20 A. YES, SIR, I DO SEE THAT.  
21 Q. NOW, IF YOU WERE TO BE DOING A  
22 META-ANALYSIS IN THIS AREA, WOULD THAT BE, WOULD  
23 THOSE BE PLACES YOU WOULD GO TO IDENTIFY THE  
24 APPROPRIATE SEARCHES?  
25 A. YES.  
26 Q. AND HAVE YOU LOOKED AT THE  
27 BIBLIOGRAPHY OR THE REFERENCE SECTION?  
28 A. AFTER A FEW MINUTES I DID GLANCE  
3064  
1 THROUGH IT. YEAH, I DID. I AM SORRY, I DID GLANCE  
2 THROUGH IT.  
3 Q. OKAY. NOW, IF THIS, IF YOU WERE  
4 DOING A STUDY LIKE THIS, WOULD THESE BE THE SORTS  
5 OF REFERENCES YOU WOULD GO TO?  
6 A. WELL, I CAN'T ANSWER THAT FOR SURE.  
7 MY SUSPICION IS THAT THE ANSWER IS YES. BUT YOU  
8 MADE A BIG -- YOU SAID IF YOU WERE DOING SUCH AN  
9 ANALYSIS.  
10 Q. LOOK AT THE LAST REFERENCE, THAT'S  
11 ONE YOU WILL PROBABLY RECOGNIZE.  
12 A. YEP.  
13 Q. THAT'S THE THUN, T-H-U-N, ARTICLE?  
14 A. YES. YES, IT IS.  
15 Q. AND THEN NUMBER 61 YOU WILL NOTICE  
16 AN ARTICLE BY OSCAR AUERBACH?  
17 A. YES.  
18 Q. YOU RECOGNIZE THAT NAME, DON'T YOU?  
19 A. YES.  
20 Q. AND I AM SURE THERE ARE A NUMBER OF  
21 OTHER NAMES IN THAT REFERENCE SECTION WHO YOU  
22 RECOGNIZE AS BEING IMPORTANT IN THIS AREA?  
23 A. YES.  
24 Q. SO AS WE SIT HERE TODAY, DOES THIS  
25 APPEAR AS IF IT WOULD BE A RELIABLE STUDY IN THIS  
26 AREA?  
27 A. META-ANALYSIS IS ACTUALLY A  
28 PARTICULAR INTEREST OF MINE. IF YOU ACTUALLY LOOK  
3065  
1 ON MY CURRICULUM VITAE, YOU WILL SEE THAT ONE OF  
2 THE PAPERS, ONE OF THE PROJECTS IN PROGRESS IS  
3 CALLED THE "BLIND MAN AND THE META-ANALYSIS OF AN  
4 ELEPHANT."  
5 IT IS VERY MUCH MISUSED AS A  
6 STATISTICAL TOOL.  
7 SO THE ANSWER TO YOUR QUESTION IS,  
8 IF I WERE GOING TO DO A META-ANALYSIS, AND IT'S  
9 ACTUALLY QUITE EASY TO DO, I AM SURE I WOULD DO  
10 WHAT THEY DID.  
11 THE QUESTION IS, WHETHER IT IS  
12 APPROPRIATE TO DO A META-ANALYSIS ON THE SUBJECT.  
13 YOU ASK ME, I WILL BE GLAD TO TELL YOU WHY I THINK  
14 IT IS NOT APPROPRIATE.  
15 Q. BUT THIS ARTICLE WAS SUBJECT TO THE  
16 PEER REVIEW PROCESS OF THE LUNG CANCERS OF THE

17 JOURNAL OF LUNG CANCER; CORRECT?  
18 A. BECAUSE SOMETHING IS SUBJECT TO --  
19 SOMETHING IS PUBLISHED IN A PEER REVIEW JOURNAL, BY  
20 NO MEANS INDICATES THAT IT IS CORRECT.  
21 THE COURT: EXCUSE ME, MR. CARLTON.  
22 I MUST INTERRUPT.  
23 WE HAVE A JUROR WHOSE GOT TO GO TO  
24 A TELEPHONE.  
25 SIR, IF YOU WOULD JUST STEP OUT.  
26 YES, MA'AM.  
27 JUROR: IT'S ME.  
28 THE COURT: DO YOU HAVE A CELL PHONE?  
3066  
1 JUROR: YES.  
2 THE COURT: COULD YOU STEP OUT IN THE  
3 HALL.  
4 IF IT IS GOING TO TAKE ANY EXTENDED  
5 TIME, LET ME KNOW AND I WILL EXCUSE THE JURY.  
6 THANK YOU.  
7  
8 (INTERRUPTION IN PROCEEDINGS.)  
9  
10 (THE FOLLOWING PROCEEDINGS  
11 WERE HELD IN OPEN COURT IN  
12 THE PRESENCE OF THE JURY.)  
13  
14 THE COURT: ALL RIGHT. WE ARE BACK ON  
15 THE RECORD. OUR JURY PANEL IS WITH US IN ITS  
16 ENTIRETY.  
17 MR. CARLTON, YOU MAY CONTINUE, SIR.  
18 Q BY MR. CARLTON: ALL RIGHT,  
19 DOCTOR. I WOULD LIKE TO MOVE ON TO A DIFFERENT  
20 SUBJECT AND THAT'S THE RELATIONSHIP OF B.A.C. TO  
21 SMOKING.  
22 YOU TESTIFIED ABOUT THAT TODAY.  
23 AND YOUR ANALYSIS OF THE  
24 RELATIONSHIP OF B.A.C. TO SMOKING IS BASED UPON THE  
25 TWO STUDIES, MORABIA AND WYNDER AND FALK STUDY?  
26 A. THAT IS RIGHT.  
27 Q. AND THOSE ARE NOT THE ONLY STUDIES,  
28 I BELIEVE, THAT DEAL WITH THE RELATIONSHIP BETWEEN  
3067  
1 SMOKING AND B.A.C., ISN'T THAT RIGHT?  
2 A. THOSE WERE THE ONLY TWO THAT I  
3 FOUND ON THE SUBJECT, WHICH I ALSO IDENTIFIED. SO  
4 DO YOU WANT TO REFER ME TO A SPECIFIC PART OF THE  
5 ARTICLE? BECAUSE I DID NOT SEE ANYTHING ABOUT  
6 B.A.C., WHEN I GLANCED THROUGH IT.  
7 Q. LOOKING JUST REAL QUICKLY AT THE  
8 MORABIA AND WYNDER STUDY -- I AM SORRY, I HAVE  
9 MOVED TO THE MORABIA AND WYNDER STUDY, NOT THAT ONE  
10 RIGHT THERE, UNLESS YOU HAVE IT IN FRONT OF YOU.  
11 A. WE ARE NOT TALKING ABOUT THE  
12 META-ANALYSIS?  
13 Q. NO, MORABIA AND WYNDER STUDY.  
14 A. I PROBABLY DO.  
15 Q. AND THIS WAS ONE OF THE TWO STUDIES  
16 THAT YOU RELIED ON?  
17 CAN YOU READ IT ON THE SCREEN?  
18 A. OH, I AM SORRY.  
19 Q. THIS IS THE MORABIA AND WYNDER  
20 STUDY. DO YOU SEE THAT?  
21 A. YES.

22 Q. AND THIS WAS SORT OF A SUMMARY OF  
23 THEIR CONCLUSION, WASN'T IT?  
24 A. YES.  
25 Q. (READING)  
26 "SMOKING PLAYS AN IMPORTANT  
27 PART IN THE ETIOLOGY OF  
28 BRONCHIOLOALVEOLAR CARCINOMA BUT IS  
3068  
1 NOT THE ONLY POTENTIAL CAUSE BECAUSE  
2 OF A LARGE PROPORTION OF NEVER SMOKERS  
3 AMONG PATIENTS WITH THIS DISEASE."  
4 THAT'S WHAT THEY WROTE; RIGHT?  
5 A. THAT'S WHAT THEY WROTE.  
6 ACTUALLY, CAN I -- COULD YOU PUT  
7 THAT BACK UP.  
8 CAN I JUST READ THE PARAGRAPH ABOVE  
9 IT, NEXT TO RESULTS. IT DOES SAY 10 PERCENT OF  
10 MALE CASES AND 25 PERCENT OF FEMALE CASES HAD NEVER  
11 SMOKED.  
12 SO THE CONVERSE IS THAT 90 PERCENT  
13 OF MEN, MALE CASES AND 75 PERCENT OF FEMALE CASES  
14 HAD BEEN SMOKERS.  
15 Q. RIGHT. AND YOU TESTIFIED BECAUSE  
16 OF THE SMALL SAMPLE SIZE HERE, THIS IS LESS  
17 RELIABLE THAN IT MIGHT OTHERWISE BE?  
18 A. THE SMALL SAMPLE SIZE AND THE FACT  
19 THAT THE DIFFERENCE IS NOT THAT GREAT.  
20 Q. AND YOU WERE -- YOU HAD A  
21 DEPOSITION IN THIS CASE; RIGHT?  
22 A. YES, SIR.  
23 Q. AND YOU TESTIFIED IN THAT  
24 DEPOSITION THAT MORE STUDIES ARE NEEDED TO  
25 DETERMINE WHETHER B.A.C. IS ATTRIBUTABLE TO  
26 SMOKING; RIGHT?  
27 A. YES.  
28 Q. AND LET ME ASK YOU THIS: YOU ARE  
3069  
1 FAMILIAR WITH AN ARTICLE BY DR. BARSKY, AMONG  
2 OTHERS, AREN'T YOU?  
3 A. YES.  
4 Q. "RISING INCIDENTS OF  
5 BRONCHIOLOALVEOLAR LUNG CARCINOMA AND ITS UNIQUE  
6 CLINICOPATHOLOGIC FEATURES?  
7 A. I HAVE READ THAT ARTICLE.  
8 Q. YOU HAVE READ THAT ARTICLE IN  
9 RELATION TO THIS CASE, DIDN'T YOU?  
10 A. I READ IT BEFORE.  
11 Q. AND DIDN'T DR. BARSKY FIND AND HIS  
12 COLLEAGUES IN THIS ARTICLE THAT THE CAUSE OF B.A.C.  
13 REMAINS UNCLEAR?  
14 A. THAT WAS CERTAINLY -- YES, YOU  
15 KNOW, THAT WAS THEIR COMMENT BUT THEY REALLY  
16 DIDN'T, YOU KNOW, THEY DIDN'T REALLY COMPARE A  
17 GROUP OF PATIENTS WITH A DISEASE TO A GROUP OF  
18 PATIENTS WITHOUT THE DISEASE. SO IT DIDN'T HAVE --  
19 IT WASN'T A CASE CONTROL STUDY.  
20 Q. IT WAS A DIFFERENT KIND OF --  
21 A. A DIFFERENT TYPE OF ANALYSIS, YES.  
22 Q. AND WHAT DR. BARSKY AND HIS  
23 COLLEAGUES FOUND WAS THIS, ISN'T IT TRUE, "THE  
24 ETIOLOGY OF B.A.C. REMAINS UNCLEAR. B.A.C. HAS  
25 BEEN SHOWN TO BE ASSOCIATED WITH CIGARETTE SMOKING  
26 BUT NOT AS STRONGLY ASSOCIATED WITH SMOKING AS ARE



27 SQUAMOUS AND SMALL CELL CARCINOMA"?

28 A. YES.

3070

1 Q. "IN ADDITION, THE LUNG CANCER STUDY

2 GROUP -- " ARE YOU FAMILIAR WITH THAT?

3 A. YES, I AM.

4 Q. (READING)

5 "THE LUNG CANCER STUDY GROUP

6 REPORTED THAT PATIENTS WITH B.A.C.

7 WERE SIGNIFICANTLY LESS LIKELY TO HAVE

8 A HISTORY OF SMOKING THAN WERE OTHER

9 CASES OF ADENOCARCINOMA. IN OUR

10 RETROSPECTIVE STUDY, APPROXIMATELY 30

11 PERCENT OF OUR B.A.C. CASES NEVER

12 SMOKED, 30 PERCENT SMOKED

13 INTERMITTENTLY OR REMOTELY, AND 40

14 PERCENT SMOKED HEAVILY UP TO THE TIME

15 OF DIAGNOSIS."

16 THAT'S WHAT DR. BARSKY SAYS?

17 A. YES.

18 Q. AND THAT ARTICLE WAS PUBLISHED IN

19 1994, WASN'T IT?

20 A. YES, SIR.

21 Q. AND THAT, THAT STUDY ANALYZED 187

22 DIFFERENT CASES?

23 A. I DON'T RECALL. BUT I SUSPECT YOU

24 ARE CORRECT.

25 Q. ALL RIGHT. YOU ARE ALSO FAMILIAR

26 WITH A STUDY BY BARKLEY AND GREEN?

27 A. YES.

28 Q. AND THAT'S ANOTHER STUDY THAT YOU

3071

1 READ IN RELATION TO THIS CASE?

2 A. RIGHT.

3 I BELIEVE THAT THAT WAS ACTUALLY

4 NOT A STUDY BUT THAT WAS ACTUALLY A REVIEW ARTICLE.

5 I MAY BE WRONG.

6 Q. YES. TO REVIEW?

7 A. YES.

8 Q. NOW, THEY FOUND THAT THE IMPACT OF

9 SMOKING ON B.A.C. WAS A CONTROVERSIAL ISSUE, DIDN'T

10 THEY?

11 A. UH-HUH. BUT ALL THEY DID WAS

12 SIMPLY REVIEW THE DATA, REVIEW THE LITERATURE

13 WITHOUT REALLY DOING ANY INDEPENDENT ANALYSIS OF

14 THEIR OWN.

15 Q. SO AS OF THE DATE OF THAT ARTICLE,

16 WHICH WAS 1996?

17 A. YES.

18 Q. AND A REVIEW OF THE LITERATURE AS

19 OF THAT DATE, FOUND IT WAS A CONTROVERSIAL ISSUE;

20 RIGHT?

21 A. YES.

22 Q. ARE YOU AWARE THAT THE INCIDENTS OF

23 B.A.C. AMONG NON-SMOKERS HAS RISEN AT THE SAME RATE

24 AS IT HAS AMONG SMOKERS?

25 A. I AM NOT, NO.

26 MR. CARLTON: NOTHING FURTHER.

27 THE COURT: ALL RIGHT.

28 MR. PIUZE: YOUR HONOR, THE BALL IS SORT

3072

1 OF IN THE COURT'S COURT.

2 THE COURT: OKAY. DO YOU HAVE A WITNESS

3 TO FOLLOW HERE?  
4 MR. PIUZE: I DO.  
5 THE COURT: IF WE COULD, PERHAPS, WE  
6 COULD FINISH THE OTHER EXAMINATION YOU WISH TO DO  
7 AND THEN I WILL COMPLETE MY WORK AT THE BREAK.  
8 MR. PIUZE: YES. WELL THEN LET ME JUST  
9 FOLLOWUP ON JUST THIS VERY LIMITED PORTION.  
10 THE COURT: VERY WELL, SIR.  
11 MR. PIUZE: OKAY.  
12 THE COURT: THANK YOU.  
13  
14 REDIRECT EXAMINATION  
15  
16 BY MR. PIUZE:  
17 Q. JUST ONE LITTLE THING.  
18 A. YES.  
19 Q. A LONG TIME AGO, LIKE THREE WEEKS  
20 AGO, WE DID HEAR ABOUT COHORT STUDIES, AND WE DID  
21 HEAR ABOUT CASE CONTROL STUDIES. AND ONE IS  
22 LOOKING INTO THE FUTURE STUDY AND ONE IS LOOKING  
23 INTO THE PAST STUDY.  
24 A. YES.  
25 Q. AND WE HEARD THAT FROM YOU AGAIN  
26 THIS MORNING?  
27 A. YES.  
28 Q. HAVING TO DO WITH THE SMALL NUMBERS  
3073  
1 HERE, WHEN YOU AND I WERE DISCUSSING  
2 BRONCHIOLOALVEOLAR CELL CARCINOMA, AND I PUT UP  
3 TABLE 10, WHICH TALKS ABOUT 87 PEOPLE TOTAL?  
4 A. YES.  
5 Q. AND TABLE -- EXCUSE ME, THAT WAS 9.  
6 AND 10, WHICH TALKS ABOUT 21 PEOPLE  
7 TOTAL?  
8 A. UH-HUH.  
9 Q. ARE THESE COHORT STUDIES LOOKING  
10 AHEAD OR CASE CONTROL STUDIES LOOKING BACK?  
11 A. THESE ARE CASE CONTROL STUDIES,  
12 LOOKING BACK.  
13 Q. SO ALL OF THESE ARE PEOPLE WHO  
14 ALREADY HAVE CANCER?  
15 A. YES.  
16 Q. AND FOR THESE PEOPLE WHO ALREADY  
17 HAVE CANCER ARE NOW TRYING TO FIGURE OUT WHAT  
18 HAPPENED?  
19 A. WHAT THEY DO IN A CASE CONTROL  
20 STUDY IS THEY IDENTIFY A GROUP OF PATIENTS WHO HAVE  
21 CANCER AND THEN A GROUP OF CONTROLS, THOSE WHO  
22 DON'T HAVE CANCER.  
23 Q. ON THE FIRST TWO TABLES THAT WE  
24 WORKED OFF OF WHICH WAS 11, WE ARE DEALING WITH  
25 274, 450, 740, OVER A MILLION PEOPLE?  
26 A. YEAH.  
27 Q. THIS IS A COHORT OR LOOKING FORWARD  
28 STUDY?  
3074  
1 A. RIGHT, YES.  
2 Q. AND IN TABLE 12, WITHOUT MY DOING  
3 THAT SAME MATH AGAIN, IT LOOKS LIKE IT IS AT LEAST  
4 ONE AND A HALF MILLION PEOPLE TOTAL?  
5 A. IT'S OVER A MILLION.  
6 Q. 2, 4, 6, 1.4?  
7 A. THESE ARE NOT PEOPLE. THOSE ARE

8 PEOPLE TIMES YEAR. THAT'S PERSON TIME. BUT EACH  
9 STUDY DID HAVE OVER A MILLION PEOPLE.

10 Q. AGAIN, THAT'S A LOOK FORWARD?

11 A. THAT'S A LOOKING FORWARD STUDY.

12 Q. GOES DOWN IN THESE BIGGER STUDIES?

13 A. YES, SIR.

14 Q. THE ACTUAL NUMBER OF PEOPLE WHO HAD

15 ADENOCARCINOMA IS A PRETTY SMALL HERE.

16 DO YOU SEE THAT?

17 A. IF YOU JUST LOOK AT, YOU KNOW, THE

18 79 PLUS 6 FOR MEN, 85 -- 85 IS NOT A BIG NUMBER,

19 BUT THE QUESTION IS, IS NOT WHETHER 85 IS A BIG

20 NUMBER -- A SMALL NUMBER, IT'S A SMALL NUMBER IF,

21 IN FACT, THE DIFFERENCE IS -- IF THE DIFFERENCES

22 ARE HUGE. AND HERE YOU ARE TALKING ABOUT A

23 RELATIVE DIFFERENCE OF 16 FOLD --

24 Q. I UNDERSTAND THAT.

25 A. IT'S PLENTY, YES.

26 Q. LET ME INTERRUPT, I AM GOING FOR A

27 DIFFERENT POINT.

28 A. OKAY.

3075

1 Q. AND ON THIS TABLE 11, THE NUMBER OF

2 CASES ADDING THESE TWO NUMBERS AGAIN HERE, WE ARE

3 DEALING WITH 38 PEOPLE?

4 A. 28, ACTUALLY.

5 Q. 28, SORRY.

6 SO THE POINT MR. CARLTON WAS TRYING

7 TO MAKE FOR YOU WAS, IF, IN THESE LOOKING BACK

8 STUDIES, WHERE THERE'S 87 PEOPLE WITH CANCER, YOU

9 SAID, YOU GOT TO TAKE THESE WITH A GRAIN OF SALT.

10 WHY ISN'T IT TRUE, I THINK THE

11 POINT THAT WAS BEING MADE, WHY ISN'T IT TRUE THAT

12 IN THESE COHORT, LOOKING AHEAD STUDIES, IF THERE'S

13 ONLY 85 PEOPLE OR SO, WHY ISN'T IT TRUE, YOU HAVE

14 TO TAKE THAT WITH A GRAIN OF SALT, YOUR COMMENT WAS

15 APPLES AND ORANGES, SPENT FOUR MINUTES GETTING

16 THERE.

17 WHY IS IT APPLES AND ORANGES?

18 A. WELL, I MEAN, IT DEPENDS --

19 ANALYZING -- ONE CAN ACTUALLY USE STATISTICS TO BE

20 DECEITFUL AS WELL AS TO BE HONEST.

21 YOU KNOW, IT'S NOT THE QUESTION OF

22 WHETHER 87 IS A BIG NUMBER OR A SMALL NUMBER.

23 YOU KNOW, IF YOU HAVE A HUGE

24 DIFFERENCE, AND, FRANKLY, IT'S NOT SO CRITICAL

25 WHETHER IT IS A COHORT OR CASE CONTROL STUDY.

26 BUT IF YOU HAVE A VERY, VERY LARGE

27 DIFFERENCE, YOU KNOW, YES, THERE WERE 85 CASES,

28 BUT, YOU KNOW, IF 82 OF THEM OCCUR AMONG SMOKERS,

3076

1 THAT TRANSLATES INTO A RELATIVE RISK OF 16 FOLD,

2 THOSE 85 OR 87 CASES ARE MORE THAN ENOUGH TO SHOW

3 THAT ASSOCIATION IN A STATISTICAL WAY THAT WE

4 CLEARLY KNOW THAT IT INCREASES THE RISK.

5 IT MAY NOT BE EXACTLY 16, IT MAY BE

6 10. IT MAY BE 20. BUT IT CERTAINLY INCREASES THE

7 RISK.

8 WITH B.A.C., WITH THOSE RELATIVELY

9 SMALL NUMBER OF CASES AND THE FACT THAT THERE IS AN

10 ASSOCIATION BETWEEN SMOKE BUT IT IS NOT THAT

11 POWERFUL, IT'S TWO TO THREE FOLD AS OPPOSED TO 16

12 FOLD.

13 ONE NEEDS TO BE A LITTLE CAUTIOUS  
14 WHEN WE ARE DEALING WITH SMALL NUMBERS AND  
15 DIFFERENCES THAT ARE NOT THAT GREAT.  
16 Q. SO WHEN YOU LOOK AT THE JURY --  
17 A. YES.  
18 Q. -- AND YOU SAY, IF YOU HAVE GOT  
19 ADENOCARCINOMA THERE'S A 95 PERCENT, 94 PERCENT  
20 SHOT IT IS DUE TO SMOKING?  
21 A. YES.  
22 Q. ARE YOU TAKING THAT WITH A GRAIN OF  
23 SALT, ARE YOU SAYING --  
24 A. YOU ARE TALKING ABOUT A MILLION  
25 PERSON COHORT STUDY, THAT IS AS DEFINITIVE DATA AS  
26 WE WILL EVER SEE.  
27 Q. NO GRAIN OF SALT THERE?  
28 A. NO GRAIN OF SALT THERE.  
3077  
1 Q. NOW, LET'S JUMP OVER TO B.A.C. AND  
2 THEN I WILL BE DONE WITH THIS PORTION.  
3 THIS IS YOUR PROSPECTIVE LARGE  
4 STUDY OF ADENOCARCINOMA AND THE EARLIER STUDY?  
5 A. THIS IS THE 1959 STUDY.  
6 Q. 1959 STUDY?  
7 A. YES.  
8 Q. IT IS LIKE A TWO-THIRDS --  
9 A. YES.  
10 Q. -- SHOT THAT SMOKING IS RELATED TO  
11 ADENO CARCINOMA; RIGHT?  
12 A. RIGHT, YES.  
13 Q. AND WITH THE PASSAGE OF TIME FOR  
14 REASONS THAT WE HAVE ALREADY DISCUSSED, BY THE TIME  
15 THE 1982 STUDY WAS PUBLISHED, I REALIZE IT IS  
16 ONGOING, BUT THE PART THAT WAS PUBLISHED IN '97,  
17 THAT TWO-THIRDS SHOT HAD JUMPED UP TO '94 PERCENT?  
18 A. THAT IS CORRECT.  
19 Q. SO HERE'S MY QUESTION: IN THESE  
20 EARLY STUDIES OF BRONCHIOLOALVEOLAR CARCINOMA, YOU  
21 ARE SHOWING ONE OF THESE STUDIES AS 70 PERCENT?  
22 A. YES.  
23 Q. CHANCE CORRELATION TO TOBACCO AS  
24 THE CAUSE OF THE CANCER AND IN ANOTHER ONE WHERE  
25 YOU ARE SHOWING 86 PERCENT CHANCE OF CAUSE BY  
26 TOBACCO?  
27 A. YES.  
28 Q. DO YOU ANTICIPATE THESE THINGS,  
3078  
1 WITH THE ADDED RESEARCH THAT MR. CARLTON JUST  
2 DISCUSSED WITH YOU, ARE GOING TO BE STAYING THE  
3 SAME, GOING UP OR GOING DOWN?  
4 A. WELL, I DON'T KNOW, BUT MY STRONG  
5 SUSPICION IS THAT THE DISEASE IS EVOLVING. I STILL  
6 BELIEVE WE ACTUALLY NEED ANOTHER STUDY. I ACTUALLY  
7 INTEND TO DO THAT.  
8 I ACTUALLY WILL PROBABLY BE ABLE TO  
9 DO THAT WITHIN THE STATE OF RHODE ISLAND BECAUSE WE  
10 HAVE A STATE TUMOR REGISTRY.  
11 MY SUSPICION IS THAT WITH A LARGER  
12 STUDY WE WILL CLEARLY SHOW THE ASSOCIATION BETWEEN  
13 B.A.C. IN THE MID-'80'S TO YEAR 2000 AND SMOKING  
14 AND MY STRONG SUSPICION IS THAT IT WILL BE ALMOST  
15 AS STRONG AS ALL THE ADENOCARCINOMA PUT TOGETHER.  
16 THOUGH I STILL THINK THERE MAY BE  
17 SOME PATIENTS AND MAYBE A LITTLE LESS STRONG THAN

18 THE 94 PERCENT, BUT I THINK IT'S GOING TO BE 94  
19 PERCENT.  
20 MR. PIUZE: THANK YOU. THAT'S ALL I HAVE  
21 AT THIS POINT.  
22 MR. CARLTON: A FEW MORE QUESTIONS.  
23 THE COURT: PLEASE.  
24  
25 RE-CROSS-EXAMINATION  
26  
27 BY MR. CARLTON:  
28 Q. JUST FOR A BIT OF CLARIFICATION.  
3079  
1 A. I AM TRYING TO -- OH, THAT'S --  
2 Q. CAN YOU SEE THAT?  
3 A. YES.  
4 Q. NOW, WHAT, I THINK YOU ARE SAYING,  
5 TELL ME IF I AM WRONG, IS THIS: IN A SMALL SAMPLE,  
6 THE CERTAINTY THAT THIS NUMBER RIGHT HERE IS  
7 CORRECT GOES DOWN. IN A LARGE SAMPLE, THE  
8 CERTAINTY THAT THIS NUMBER IS CORRECT GOES UP;  
9 RIGHT?  
10 A. THE CERTAINTY THAT THAT NUMBER --  
11 YOU ARE ASKING ME A STATISTICAL QUESTION SO I WILL  
12 ANSWER IT, THE CERTAINTY OF THAT NUMBER IS CORRECT  
13 RELATES TO THE CONFIDENCE OF THE NUMBERS NEXT TO  
14 IT.  
15 Q. AND THE MORE, THE LARGER YOUR  
16 SAMPLE IS, THIS CONFIDENCE INTERVAL SHOULD NARROW,  
17 ISN'T THAT RIGHT?  
18 A. THAT IS ABSOLUTELY CORRECT.  
19 Q. SO WHAT WE HAVE GOT HERE IS A WIDE  
20 CONFIDENCE INTERVAL FROM SEVEN UP TO 46?  
21 A. THAT IS CORRECT.  
22 Q. SO YOUR NUMBER 16 IS SORT OF  
23 SOMEWHERE IN THERE?  
24 A. ABSOLUTELY, CORRECT.  
25 Q. AND THAT GIVES YOU ONE NUMBER TO  
26 LOOK AT.  
27 IF, FOR INSTANCE, THE SAMPLE, AS A  
28 WHOLE WAS, SAY, A THOUSAND PEOPLE, WOULDN'T YOU  
3080  
1 EXPECT THAT THE CONFIDENCE INTERVAL WOULD BE MUCH  
2 NARROWER; RIGHT?  
3 A. IF THE SAMPLE, IF, IN FACT -- IF IT  
4 WAS A THOUSAND PEOPLE AND THE PROPORTION, AND YOU  
5 STILL HAD, WHAT IS IT, IT LOOKS LIKE 80, 94 -- 90  
6 PERCENT OF THEM OR 88 PERCENT OR SO WERE IN THE  
7 SMOKERS GROUP, IF YOU HAD A THOUSAND PEOPLE AND YOU  
8 HAD 920 SMOKERS AND 80 NON-SMOKERS, SAY IT WAS THE  
9 SAME PROPORTION, SO YOU WOULD COME UP WITH THE SAME  
10 RELATIVE RISK BUT -- SO IT WOULD BE A RELATIVE RISK  
11 OF 16 BUT THE CONFIDENT INTERVALS MAYBE 13 TO 19 AS  
12 OPPOSED TO 7 TO 46.  
13 Q. SO WHAT THIS NUMBER REPRESENTS  
14 HERE, OR ACTUALLY, THIS NUMBER HERE, THE CONFIDENCE  
15 INTERVAL IS, YOU CAN BE SURE, 95 PERCENT SURE THAT  
16 THE INCIDENT RATE FALLS SOMEWHERE BETWEEN 7.3 AND  
17 46.4?  
18 A. ACTUALLY, THAT'S ABSOLUTELY  
19 CORRECT.  
20 Q. SO NOW WE LOOK AT B.A.C.  
21 THERE IT IS.  
22 AND WHAT WE HAVE, IF -- YOU HAVE

23 GOT, AGAIN --  
24 A. WHICH, IS THIS --  
25 Q. THIS IS THE WYNDER AND GRAHAM.  
26 A. THAT'S THE MORABIA AND GRAHAM AND  
27 WYNDER STUDY, YES.  
28 Q. IF WE ARE LOOKING, AGAIN, THIS IS,  
3081  
1 WE ARE BACK TO MORABIA AND WYNDER, 87 PEOPLE.  
2 A. RIGHT.  
3 Q. AND YOUR ODDS RATIO OF 2.9?  
4 A. RIGHT.  
5 Q. AND YOUR CONFIDENCE INTERVAL IS  
6 THEN WHAT?  
7 A. IT'S SOMEWHERE -- IT'S 1.6 TO 5.1.  
8 SO IT IS STATISTICALLY SIGNIFICANT BUT IT'S, YOU  
9 KNOW, IT'S NOT THAT IMPRESSIVE.  
10 Q. PRETTY QUESTIONABLE. IF IT WAS  
11 DOWN -- 1.6 WAS 0.9 IT WOULDN'T BE STATISTICALLY  
12 SIGNIFICANT; RIGHT?  
13 A. SAY THIS ONE MORE TIME.  
14 Q. IF THE LOWER RANGE OF YOUR  
15 CONFIDENCE INTERVAL --  
16 A. WAS 0.9 IT WOULD NOT.  
17 Q. IT WOULD HAVE NO STATISTICAL  
18 SIGNIFICANCE?  
19 A. IF YOU WANT TO --  
20 Q. SO, WHILE WE HAVE THESE NUMBERS  
21 HERE, THEY CAN MOVE AROUND QUITE A BIT?  
22 A. YES.  
23 MR. CARLTON: THANK YOU. I HAVE NOTHING  
24 FURTHER.  
25 MR. PIUZE: NOR DO I.  
26 THE COURT: ALL RIGHT, SIR, YOU MAY STEP  
27 DOWN.  
28 THE WITNESS: THANK YOU VERY MUCH.  
3082  
1 MR. PIUZE: YOUR HONOR, I AM GOING TO  
2 HAVE TO TAKE A QUICK TRIP IN THE ELEVATOR TO GET MY  
3 NEXT WITNESS.  
4 THE COURT: THE WITNESS IS EXCUSED.  
5  
6 (INTERRUPTION IN PROCEEDINGS.)  
7  
8 MR. PIUZE: DON FERREE, NEXT WITNESS.  
9 THE COURT: SIR, PLEASE STEP FORWARD OVER  
10 HERE TO MY LEFT, YOUR RIGHT.  
11  
12  
13 G. DONALD FERREE,  
14 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN  
15 AND TESTIFIED AS FOLLOWS:  
16 THE CLERK: YOU DO SOLEMNLY STATE THE  
17 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING  
18 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE  
19 TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.  
20 THE WITNESS: I DO.  
21 THE CLERK: HAVE A SEAT.  
22 STATE YOUR FIRST AND LAST NAME.  
23 THE WITNESS: YES, MY NAME IS G, THAT IS  
24 INITIAL G, DONALD FERREE, F-E-R-R-E-E, JUNIOR.  
25 THE CLERK: THANK YOU VERY MUCH.  
26  
27 DIRECT EXAMINATION

28 BY MR. PIUZE:

3083

1 Q. HI?

2 A. GOOD AFTERNOON.

3 Q. WHERE DID YOU COME FROM YESTERDAY

4 IN ORDER TO TESTIFY IN THIS CASE?

5 A. FROM MADISON, WISCONSIN WHERE I AM

6 EMPLOYED BY THE UNIVERSITY OF WISCONSIN AT MADISON.

7 Q. OKAY. WHAT'S YOUR OCCUPATION?

8 A. I AM A POLITICAL SCIENTIST AND A

9 SURVEY RESEARCHER. MY TITLES AT THE UNIVERSITY OF

10 WISCONSIN ARE SENIOR LECTURER IN SOCIOLOGY WHERE I

11 TEACH SURVEY RESEARCH METHOD -- ASSOCIATE DIRECTOR

12 OF PUBLIC OPINION RESEARCH AT THE UNIVERSITY OF

13 WISCONSIN SURVEY CENTER.

14 THE COURT: YOU ARE GOING TO NEED TO SLOW

15 DOWN A LITTLE BIT, NOT ONLY SO SHE CAN GET IT BUT

16 SO THEY CAN FOLLOW ALONG WITH YOU AS WELL.

17 GOOD.

18 Q BY MR. PIUZE: DID YOU HAVE

19 BREAKFAST WITH ME THIS MORNING?

20 A. YES, I DID.

21 Q. DID I TELL YOU TO TALK MORE SLOWLY?

22 A. YOU DID. AND I WILL TRY TO SO DO.

23 THAT IS A CONGENITAL PROBLEM OF MINE.

24 Q. EVEN IF YOU CAN TALK AT 190 WORDS A

25 MINUTE, WE CAN ONLY LISTEN AT A HUNDRED WORDS.

26 NOW, WHAT DO YOU DO AT THE

27 UNIVERSITY OF WISCONSIN IN MADISON, WISCONSIN,

28 PLEASE.

3084

1 A. I AM THE ASSOCIATE DIRECTOR OF A

2 SURVEY CENTER IN WHICH CAPACITY I WORK ON ORIGINAL

3 SURVEY RESEARCH AND INTERPRET SURVEY DATA. I ALSO

4 TEACH SOCIOLOGY, SURVEY RESEARCH METHODS AT THE

5 UNIVERSITY OF WISCONSIN.

6 Q. SO WHAT IS THAT, SURVEY RESEARCH

7 AND SURVEY RESEARCH METHODS, WHAT IS THAT?

8 A. SURVEY RESEARCH, OTHERWISE KNOWN AS

9 POLLING, IS THE TECHNIQUE BY WHICH A SAMPLE OF

10 PERSONS ARE ADMINISTERED QUESTIONNAIRES DESIGNED TO

11 ELICIT THEIR BELIEFS, ATTITUDES, WHAT HAVE YOU, TO

12 MEASURE WHAT IS ON THEIR MINDS AT VARIOUS POINTS IN

13 TIME, ACCURATELY AND SCIENTIFICALLY USING THE BEST

14 ESTABLISHED PRINCIPALS OF SOCIAL SCIENCE AND OF

15 MATHEMATICAL PROBABILITY.

16 Q. SO IS SURVEY RESEARCH POLLING?

17 A. FUNDAMENTALLY, YES, MOST PEOPLE IN

18 THE PROFESSION WOULD USE THOSE TWO WORDS

19 INDEPENDENTLY, THAT DOES NOT NECESSARILY MEAN --

20 USE THESE WORDS INTERCHANGEABLY.

21 THAT DOES NOT NECESSARILY MEAN THAT

22 ANYTHING THAT ANYONE LABELS A POLL IS NECESSARILY A

23 SCIENTIFIC SURVEY.

24 Q. SO HOW LONG HAVE YOU BEEN INTO

25 SURVEY RESEARCH, SOMETIMES KNOWN AS POLLING?

26 A. I HAVE BEEN ENGAGED IN THE FIELD

27 SINCE THE MID-1970'S, FIRST AS A GRADUATE STUDENT

28 AT HARVARD UNIVERSITY AND THEN PROFESSIONALLY AT

3085

1 THE UNIVERSITY OF CONNECTICUT FROM 1978 TO 2000 AND

2 THEN CONTINUING AT THE UNIVERSITY OF WISCONSIN FROM

3 AUGUST OF 2000 TO THE PRESENT DAY.

4 Q. SO WHAT WAS THE FIRST YEAR AGAIN,  
5 1970?

6 A. I WAS EMPLOYED BY THE UNIVERSITY OF  
7 CONNECTICUT BEGINNING IN 1978, I BEGAN TO BE  
8 INVOLVED IN SURVEY RESEARCH AS A GRADUATE STUDENT  
9 AT HARVARD UNIVERSITY IN THE MID-1970'S.

10 Q. SO 25 YEARS?

11 A. THAT IS CORRECT.

12 Q. TELL THE JURY YOUR EDUCATIONAL  
13 BACKGROUND, PLEASE.

14 A. I ATTENDED HAVERFORD COLLEGE FOR MY  
15 UNDERGRADUATE EDUCATION WITH A YEAR AT THE  
16 UNIVERSITY OF HOMBURG IN GERMANY IN MY JUNIOR YEAR.  
17 I THEN CONTINUED ON TO THE HARVARD  
18 LAW SCHOOL WHERE I SPENT ONE YEAR BEFORE  
19 TRANSFERRING TO THE GRADUATE PROGRAM IN POLITICAL  
20 SCIENCE AND HARVARD UNIVERSITY, WHAT IT CALLS THE  
21 DEPARTMENT OF GOVERNMENT, AND WORKED IN THE  
22 GRADUATE PROGRAM THERE UNTIL I CAME TO THE  
23 UNIVERSITY OF CONNECTICUT IN 1978.

24 Q. NOW, AT THE UNIVERSITY OF  
25 CONNECTICUT, WHAT WERE YOU STUDYING THERE, WERE YOU  
26 TEACHING THERE, WHAT WERE YOU DOING THERE?

27 A. I WAS TEACHING AND DOING RESEARCH.

28 I BEGAN THERE IN THE INSTITUTE FOR SOCIAL INQUIRY  
3086

1 WHICH WAS A GENERAL PURPOSE SOCIAL SCIENCE RESEARCH  
2 FACILITY AT THE UNIVERSITY.

3 I WAS HIRED TO CREATE AN ORIGINAL  
4 SURVEY RESEARCH CAPACITY, THAT IS TO SAY, THE  
5 ABILITY TO DO CONTINUAL POLES, STARTED A STATE-WIDE  
6 SURVEY THAT WE CALL THE CONNECTICUT POLL AND ALSO  
7 TO BE ABLE TO DO OTHER SURVEYS. I ALSO WAS HIRED  
8 TO WORK WITH THE ROPER CENTER FOR PUBLIC OPINION  
9 RESEARCH WHICH IS THE LARGEST ARCHIVAL SURVEY DATA  
10 IN THE WORLD WHICH HAD BEEN HEADQUARTERED AT THE  
11 UNIVERSITY OF CONNECTICUT SINCE ROUGHLY A YEAR  
12 BEFORE I CAME THERE.

13 I ALSO TAUGHT AT VARIOUS TIMES IN  
14 THE POLITICAL SCIENCE DEPARTMENT AND IN THE  
15 GRADUATE PROGRAM IN SURVEY METHODOLOGY AT THE  
16 UNIVERSITY OF CONNECTICUT.

17 Q. OKAY, THANKS.

18 NOW, AT THE UNIVERSITY OF  
19 CONNECTICUT, WHO WAS YOUR EMPLOYER? WAS IT THE  
20 UNIVERSITY OF CONNECTICUT? WAS IT THE STATE OF  
21 CONNECTICUT? WAS IT ROPER SOMETHING, WHO?

22 A. THE ACTUAL EMPLOYER WAS THE  
23 UNIVERSITY OF CONNECTICUT, WHICH, OF COURSE, IS AN  
24 ADMINISTRATIVE ARM OF STATE OF CONNECTICUT LIKE  
25 PUBLIC UNIVERSITIES AROUND THE COUNTY.

26 Q. OKAY. NOW, SOMEPLACE IN YOUR NEXT  
27 TO LAST ANSWER, I THINK IT WAS, YOU MENTIONED  
28 SOMETHING ABOUT ROPER. WHAT DOES ROPER HAVE TO DO  
3087

1 WITH THE UNIVERSITY OF CONNECTICUT, PLEASE.

2 A. THE ROPER CENTER FOR PUBLIC OPINION  
3 RESEARCH IS AN EDUCATIONAL NOT FOR PROFIT  
4 CORPORATION WHICH SERVES AS AN ARCHIVE OF SURVEY  
5 INFORMATION. IT COLLECTS SURVEYS ONCE THEY ARE  
6 CONDUCTED BY VARIOUS PEOPLE IN THE ACADEMY OR IN  
7 THE PRIVATE SECTOR AND MAKES THEM AVAILABLE FOR  
8 WHAT IS CALLED SECONDARY ANALYSIS.



9 THAT IS TO SAY, LOOKING AT SURVEY  
10 RESULTS, TRACING THEM ACROSS TIME, EXAMINING THEM  
11 IN MORE DETAIL THAN IS POSSIBLE WHEN THE SURVEY WAS  
12 FIRST DONE AND THE LIKE.  
13 IT IS -- IT HAS AN OPERATING  
14 AGREEMENT WITH THE UNIVERSITY OF CONNECTICUT UNDER  
15 WHICH IT FUNCTIONS AS A DEPARTMENT OF THE  
16 UNIVERSITY OF CONNECTICUT. IT HAS NO LEGAL  
17 RELATIONSHIP WITH THE ROPER ORGANIZATION POLLING  
18 FIRM, ALTHOUGH IT WAS FOUNDED BY THE SAME PERSON.  
19 Q. THAT'S SORT OF WHERE I WAS HEADING  
20 YOU TOWARD.  
21 LONG BEFORE YOU EVER GOT HERE, THE  
22 JURY HAS SEEN SOME DOCUMENTS IN HERE THAT HAVE  
23 ROPER WRITTEN ON THEM. NOW, YOU JUST MENTIONED  
24 ROPER ORGANIZATION. WHAT IS THE ROPER  
25 ORGANIZATION?  
26 A. THE ROPER ORGANIZATION WAS A  
27 COMMERCIAL SURVEY FIRM THAT DID VARIOUS SURVEY  
28 PROJECTS FOR A VARIETY OF CLIENTS.

3088

1 IT IS CURRENTLY PART OF A LARGER  
2 ENTITY CALLED ROPER STARCH WORLDWIDE, PERSISTING AS  
3 A COMMERCIAL SURVEY RESEARCH ENTITY. THESE WERE  
4 THE PEOPLE WHO DID THE POLES WHICH WERE PUBLICLY  
5 RELEASED BEGINNING IN 1930'S AS ROPER POLLS, A  
6 SERIES OF SURVEYS DONE FOR NEWSPAPERS, FOR  
7 MAGAZINES AND THE LIKE.  
8 Q. SO SOME OF US HAVE HEARD OF THE  
9 GALLUP POLL. SOME OF US HAVE HEARD OF THE ROPER  
10 POLL. THE ROPER ORGANIZATION IS WHAT USED TO BE  
11 THE ROPER POLL?  
12 A. THAT IS CORRECT, ONE OF THE TWO OR  
13 THREE MAJOR FIRMS THAT BEGAN SCIENTIFIC RESEARCH IN  
14 THE 1930'S.  
15 Q. AND YOUR FORMER DEPARTMENT OVER  
16 THERE AT THE UNIVERSITY OF CONNECTICUT IS NOT PART  
17 OF THE ROPER POLL?  
18 A. THAT IS CORRECT. IT HAS NO LEGAL  
19 RELATIONSHIP WITH THAT ORGANIZATION AT ALL.  
20 Q. IS THE ROPER NAME THE SAME NAME FOR  
21 BOTH?

22 A. YES.  
23 Q. DID MR. OR MRS. OR WHOEVER ROPER  
24 WHO HAD THE ROPER POLL SOMEHOW DO SOMETHING TO  
25 START THIS DEPARTMENT AT THE UNIVERSITY OF  
26 CONNECTICUT?

27 A. ELMO ROPER WHO WAS THE PERSON WHO  
28 BEGAN THE ROPER POLL, ROPER ORGANIZATION, THE  
3089

1 ENTITY THAT IS NOW PART OF THIS CORPORATION, ROPER  
2 STARCH WORLDWIDE IS THE SAME PERSON WHO RIGHT AFTER  
3 WORLD WAR II FOUNDED THE ROPER CENTER FOR PUBLIC  
4 OPINION RESEARCH, ORIGINALLY ON THE CAMPUS OF  
5 WILLIAMS COLLEGE. HE FOUNDED IT OUT OF A BELIEF  
6 THAT HE AND OTHERS LIKE GALLUP OUGHT TO PRESERVE  
7 THEIR DATA, IN GENERAL, MAKE THEM AVAILABLE TO THE  
8 PUBLIC AND TO MAKE THEM PRESERVED FOR FUTURE USE OF  
9 ONE SORT OR ANOTHER.  
10 THE ROPER CENTER MOVED FROM  
11 WILLIAMS COLLEGE TO THE UNIVERSITY OF CONNECTICUT  
12 IN 1978, JUST BEFORE I CAME ON THE CAMPUS.  
13 Q. NOW, WE HAVE TALKED ABOUT ROPER.

14 WHEN YOU WERE AT THE UNIVERSITY OF  
15 CONNECTICUT, WHAT WAS YOUR TITLE OR TITLES AT THIS  
16 ROPER POSITION?

17 A. I HAD A VARIETY OF TITLES ACROSS  
18 TIME. I CAME, ORIGINALLY, AS ASSISTANT DIRECTOR  
19 FOR SURVEY RESEARCH OF THE INSTITUTE FOR SOCIAL  
20 INQUIRY AND OF THE ROPER CENTER.  
21 AS TIME WENT ON, I BECAME ASSOCIATE  
22 DIRECTOR OF BOTH. DUE TO A SERIES OF  
23 REORGANIZATIONS INCLUDING THE SPLITTING OF THE  
24 OVERALL ENTITY, THE INSTITUTES FOR SOCIAL INQUIRY  
25 INTO TWO SEPARATE DEPARTMENTS, I LEFT THE  
26 UNIVERSITY OF CONNECTICUT WITH THE TITLE SENIOR  
27 RESEARCH SCIENTIST OF ROPER CENTER FOR PUBLIC  
28 OPINION RESEARCH AND DIRECTOR OF CONNECTICUT  
3090

1 POLLING AT THE INSTITUTE FOR SOCIAL INQUIRY.

2 Q. YOU MENTIONED THE CONNECTICUT POLL  
3 TWICE. WHAT IS IT?

4 A. THE CONNECTICUT POLL WAS A  
5 STATE-WIDE SURVEY THAT WAS BEGUN BY THE UNIVERSITY  
6 OF CONNECTICUT AS A PART OF ITS OUTREACH AND  
7 SERVICE TO THE STATE OF CONNECTICUT, INTENDING TO  
8 CONDUCT SURVEYS ON A REGULAR BASIS OF THE STATE  
9 PUBLIC ASKING QUESTIONS ON A WIDE VARIETY OF TOPICS  
10 CONDUCTING APPROXIMATELY TEN SURVEYS PER YEAR.

11 I WAS HIRED TO BEGIN THAT SURVEY,  
12 TO ADMINISTER IT, AND I DID SO FROM THE VERY FIRST  
13 CONNECTICUT POLL WHICH WAS RELEASED IN APRIL OF  
14 1979 TO THE LAST ONE, THAT WAS CONDUCTED UNDER MY  
15 DIRECTION IN 2000, IN JULY 2000, JUST BEFORE I LEFT  
16 FOR THE UNIVERSITY OF THE WISCONSIN, MADISON.

17 Q. SO THESE CONNECTICUT POLLS WERE  
18 DONE FOR THE STATE?

19 A. THAT IS CORRECT.

20 Q. NOW, TELL THE JURY, PLEASE, A  
21 LITTLE BIT ABOUT FELLOWSHIPS AND AWARDS YOU  
22 RECEIVED IN REGARD TO YOUR WORK?

23 A. I RECEIVED A NUMBER OF FELLOWSHIPS  
24 AND RECOGNITION IN MY CAREER.

25 AS TO HAVERFORD COLLEGE, I WAS ONE  
26 OF THE FIRST GROUPS OF PEOPLE WHO WAS APPOINTED TO  
27 A SPECIAL TEACHING FELLOWSHIP IN POLITICAL SCIENCE,  
28 SENIORS WHO WERE DEEMED TO BE VERY GOOD AT  
3091

1 DISCIPLINE AND ALSO MIGHT HAVE AN INTEREST IN  
2 ACADEMIC CAREERS WHO HELPED TO TEACH THE  
3 INTRODUCTORY POLITICAL SCIENCE COURSE, 200  
4 GRADUATES THERE.

5 Q. YOU ARE STARTING TO GO TOO FAST.

6 A. I AM SORRY.

7 I -- WHEN I WENT TO HARVARD  
8 UNIVERSITY, I DID SO UNDER THE SPONSORSHIP OF A  
9 NATIONAL SCIENCE FOUNDATION, GRADUATE FELLOWSHIP,  
10 WHICH WAS AWARDED TO A LIMITED NUMBER OF THE MOST  
11 PROMISING GRADUATE STUDENTS IN A VARIETY OF  
12 DISCIPLINES AND SUPPORTED MY GRADUATE EDUCATION FOR  
13 A NUMBER OF YEARS AT HARVARD.

14 I ALSO WAS A TEACHING FELLOW IN  
15 GOVERNMENT, THAT IS TO SAY, POLITICAL SCIENCE AT  
16 HARVARD UNIVERSITY PRIOR TO COMING TO THE  
17 UNIVERSITY OF CONNECTICUT.

18 Q. LET ME STOP YOU FOR A SECOND.

19 I ASKED YOU A BIG QUESTION FOR  
20 WHICH I APOLOGIZE. LET ME NARROW IT DOWN.  
21 A. PLEASE.  
22 Q. BECAUSE I WASN'T SO GOOD IN SCHOOL,  
23 I AM JEALOUS.  
24 GETTING OUT OF SCHOOL, PAST SCHOOL,  
25 I AM INTERESTED IN FELLOWSHIPS AND LET ME POINT  
26 YOU, IF I COULD, I WILL JUST DIRECT YOU, HERE'S  
27 WHAT I AM INTERESTED IN, UNITED STATES INFORMATION  
28 AGENCY, DID YOU GET SOME SORT OF AN AWARD FROM  
3092  
1 THEM?  
2 A. YES, I DID.  
3 Q. WHAT'S THAT?  
4 A. I WAS DESIGNATED BY THEM AS A  
5 SO-CALLED ACADEMIC SPECIALIST AND SENT UNDER THE  
6 GOVERNMENT'S EGIS TO GUATEMALA TO SPEAK TO PEOPLE  
7 IN THAT COUNTRY ABOUT HOW SURVEY RESEARCH MIGHT BE  
8 IMPROVED THERE, AND IN PARTICULAR, HOW IT MIGHT BE  
9 USED AS A VEHICLE FOR IMPROVING DEMOCRACY BY  
10 ALLOWING MEASUREMENTS ON WHAT WAS ON PEOPLE'S MINDS  
11 AND ALLOWING IT TO PLAY A BROADER ROLE IN THE  
12 POLITICAL SYSTEM IN THAT COUNTRY. THAT WAS TAKING  
13 MY ABSTRACT KNOWLEDGE AND APPLYING IT TO A VERY  
14 CONCRETE SITUATION IN GUATEMALA.  
15 Q. HOW LONG WERE YOU THERE?  
16 A. THAT WAS FOR APPROXIMATELY TWO AND  
17 A HALF WEEKS.  
18 Q. YOU WEREN'T WITH THE C.I.A. THEN?  
19 A. I HAD NOTHING TO DO WITH THE C.I.A.  
20 Q. TELL THE JURY SOME OF YOUR  
21 PROFESSIONAL SOCIETIES THAT YOU BELONG TO.  
22 A. I AM A MEMBER OF THE AMERICAN  
23 POLITICAL SCIENCE ASSOCIATION, THE AMERICAN  
24 SOCIOLOGICAL ASSOCIATION. I AM A MEMBER OF THE  
25 AMERICAN ASSOCIATION FOR PUBLIC OPINION RESEARCH,  
26 WHICH IS THE PROFESSIONAL ORGANIZATION OF THOSE  
27 PERSONS ENGAGED IN SURVEY RESEARCH IN THE ACADEMY  
28 AND IN THE COMMERCIAL SECTOR.  
3093  
1 I WAS THE FOUNDING VICE-PRESIDENT  
2 OF THE NEW ENGLAND CHAPTER OF A.A.P.O.R., THAT'S  
3 HOW YOU PRONOUNCE THAT ACRONYM, AND WAS LATER  
4 PRESIDENT OF THAT ORGANIZATION.  
5 Q. ALMOST DONE.  
6 YOUR C. V. IS, CONTAINS DOZENS OF  
7 DIFFERENT PAPERS, DOESN'T IT?  
8 A. IT DOES.  
9 Q. AND I DON'T WANT TO GO THROUGH THEM  
10 ALL. I WOULD LIKE YOU TO PICK A COUPLE. YOU KNOW  
11 THE TOPIC WE ARE GOING TO BE DISCUSSING HERE. TELL  
12 THE JURY ABOUT A COUPLE OF YOUR PAPERS THAT MIGHT  
13 BE OF SOME INTEREST TO THEM IN VALUING YOU AS A  
14 WITNESS IN THIS TOBACCO ISSUE.  
15 A. I HAVE WRITTEN A NUMBER OF ARTICLES  
16 ABOUT METHODOLOGY OF SURVEY RESEARCH IN TERMS OF  
17 THE SAMPLING OF EFFECTIVENESS OF CALLING VARIOUS  
18 DAYS OF THE WEEK.  
19 I HAVE WRITTEN METHODOLOGICAL AS  
20 FAR AS A USE OF CERTAIN TECHNIQUES SUCH AS MULTIPLE  
21 REGRESSION FOR ANALYZING DATA.  
22 I HAVE PUBLISHED SUBSTANTIVE  
23 ARTICLES ON PUBLIC POLICY IN A VARIETY OF ARENAS

24 MAKING USE OF SURVEY DATA.

25 Q. THANKS.

26 NOW, WHILE YOU WERE AT THE

27 UNIVERSITY OF CONNECTICUT, AND THE ROPER, TELL ME

28 AGAIN, AS OPPOSED TO THE ROPER ORGANIZATION, WHAT

3094

1 ROPER IS CALLED WHAT?

2 A. ROPER CENTER FOR PUBLIC OPINION

3 RESEARCH, ROPER CENTER FOR SHORT.

4 Q. WHILE YOU WERE AT THE ROPER CENTER,

5 WERE THERE OCCASIONS WHERE THE STATE OF CONNECTICUT

6 ASKED YOU TO COME INTO COURT IN ORDER TO ACT AS AN

7 EXPERT WITNESS REGARDING YOUR AREA OF SPECIALTY?

8 A. YES. THERE WERE TWO BROAD SUCH

9 AREAS, ONE HAD TO DO WITH A SERIES OF CRIMINAL

10 CASES IN WHICH I WAS AN EXPERT WITNESS USUALLY FOR

11 THE DEFENSE, BUT SOMETIME FOR THE STATE, AND CHANGE

12 OF VENUE CASES.

13 DESIGNING AND CONDUCTING SURVEYS TO

14 MEASURE THE EXTENT OF PUBLIC AWARENESS OF CRIMINAL

15 CASES AND PREDISPOSITION AS TO THE GUILT OR

16 INNOCENCE OF THE DEFENDANTS, WITH A VIEW TOWARD

17 ESTABLISHING WHETHER OR NOT A FAIR TRIAL WAS

18 POSSIBLE.

19 I ALSO WAS AN EXPERT WITNESS IN A

20 CIVIL CASE BROUGHT AGAINST THE STATE OF CONNECTICUT

21 HAVING TO DO WITH ISSUES OF EDUCATIONAL POLICY AND

22 THE STATE'S DETERMINATION ABOUT SCHOOL DISTRICTS

23 AND VARIOUS FORMS OF STATE AID AND EDUCATIONAL

24 POLICY WHICH, AGAIN, INVOLVED ANALYZING SURVEY DATA

25 AND CONDUCTING ORIGINAL SURVEY RESEARCH FOR THAT --

26 FOR THOSE OCCASIONS.

27 Q. I WANT TO MOVE YOU FROM THE

28 UNIVERSITY OF CONNECTICUT, I AM GOING TO MOVE YOU

3095

1 FROM STOORS, CONNECTICUT TO MADISON, WISCONSIN.

2 HOW LONG HAVE YOU BEEN IN MADISON, WISCONSIN,

3 UNIVERSITY OF WISCONSIN?

4 A. SINCE AUGUST OF 2000.

5 Q. WHAT ARE YOU DOING THERE?

6 A. AS THE ASSOCIATE DIRECTOR FOR

7 PUBLIC OPINION RESEARCH, IT IS MY RESPONSIBILITY TO

8 BE PART OF THE CENTRAL LEADERSHIP TEAM OF THAT

9 SURVEY CENTER. IT IS ALSO THE RESPONSIBILITY TO

10 BEGIN TO EXPAND THE CAPACITY THAT IT HAS FOR DOING

11 PUBLIC OPINION RESEARCH AND PUBLIC POLICY RESEARCH,

12 BROADLY DEFINED, MAKING USE OF BOTH MY

13 METHODOLOGICAL EXPERTISE AND SUBSTANTIVE EXPERTISE

14 IN THAT AREA.

15 Q. IN THE PAST, HAVE SURVEYS IN

16 POLLING BEEN CONDUCTED REGARDING THE PUBLIC'S

17 THOUGHTS AND AWARENESSES OF RISK OF TOBACCO, LACK

18 OF RISK OF TOBACCO, THE MAGNITUDE OR SIZE OF RISK

19 OF TOBACCO AND RELATED ISSUE?

20 A. YES.

21 Q. HOW DO YOU KNOW?

22 A. PRIMARILY THROUGH MY WORK WITH THE

23 ROPER CENTER WHERE I HAVE ACCESS TO A -- A BODY OF

24 SURVEY DATA DEPOSITED WITH THE ROPER CENTER AND

25 ALSO PERSONALLY DESIGNED A COMPUTERIZED RETRIEVAL

26 SYSTEM FOR SURVEY DATA WHICH CONTAINS OVER A THIRD

27 OF A MILLION INDIVIDUAL SURVEY QUESTIONS DATING

28 BACK TO THE MID-1930'S.

3096

1 IN MY CAPACITY AT ROPER, I AM  
2 FAMILIAR WITH THE BODY OF PUBLIC OPINION ON A  
3 VARIETY OF TOPICS, INCLUDING THAT BROADLY DEFINED  
4 AS TOBACCO AND PERCEIVED RISK OF TOBACCO PRODUCTS.  
5 Q. WELL, THE ONE WE ARE INTERESTED IN  
6 HERE IS WHAT YOU JUST SAID, BODILY DEFINED TOBACCO  
7 AND PERCEIVED RISKS OF TOBACCO PRODUCTS. OKAY?  
8 A. YES, SIR.  
9 Q. DO YOU KNOW ONE WAY OR ANOTHER  
10 WHETHER TOBACCO COMPANIES OR THEIR UMBRELLA  
11 ORGANIZATIONS, T.I.R.C., TOBACCO INDUSTRY RESEARCH  
12 COMMITTEE, I THINK, T.I., TOBACCO INSTITUTE, OR  
13 THEIR SUBGROUPS, HIRED THE ROPER ORGANIZATION TO DO  
14 POLLING FOR THEM?  
15 A. YES, THEY DID.  
16 Q. AND HOW DO YOU KNOW THAT?  
17 A. I KNOW THAT BOTH FROM, I HAD KNOWN  
18 IT IN GENERAL, FROM GENERAL KNOWLEDGE, AND FROM  
19 INDIRECT REPORTS THAT VARIOUS PEOPLE HAD. AND I  
20 KNOW IT SPECIFICALLY FROM MATERIALS WHICH WERE MADE  
21 AVAILABLE TO ME WHEN I WAS A WITNESS IN AN EARLIER  
22 TOBACCO-RELATED CASE IN THIS JURISDICTION AND THE  
23 ATTORNEYS FOR THE PLAINTIFF IN THAT CASE PROVIDED  
24 ME WITH COPIES OF MATERIALS THAT HAD BEEN OBTAINED  
25 AS A PART OF DISCOVERY, SHOWING ME SOME OF THE  
26 MATERIALS THAT THE ROPER CENTER -- ROPER  
27 ORGANIZATION HAD CONDUCTED FOR THE TOBACCO  
28 INDUSTRY.

3097

1 Q. BESIDES THE ROPER ORGANIZATION'S  
2 POLES FOR THE TOBACCO INDUSTRY, ARE YOU AWARE OF  
3 ANY OTHER POLLS BY OTHER ORGANIZATIONS ON THE  
4 SUBJECT?  
5 A. YES. THERE ARE A SERIES OF  
6 SURVEYS, THE MAIN CORPUS, THE PRIMARY BODY OF DATA  
7 OF WHICH I AM AWARE WAS THAT BY THE ROPER  
8 ORGANIZATION. HOWEVER, A NUMBER OF OTHER FIRMS  
9 INCLUDING HILL & KNOWLTON AND SEVERAL PRIVATE OTHER  
10 RESEARCH FIRMS DID DO A COMBINED WORK THAT I AM  
11 AWARE OF FOR THE TOBACCO INDUSTRY DATING FROM  
12 APPROXIMATELY THE 1950'S AND '60'S ON INTO THE  
13 '70'S, AT LEAST.  
14 Q. DO YOU HAVE THESE IN MIND?  
15 A. YES, I DO.  
16 Q. HERE'S WHAT I WANT TO TALK TO YOU  
17 ABOUT OR WANT YOU TO TALK TO THE JURY ABOUT.  
18 I'D LIKE TO KNOW, FOR OPENERS, WHEN  
19 THE FIRST POLLING WAS CONDUCTED REGARDING, OF THE  
20 PUBLIC, REGARDING TOBACCO AND THE PUBLIC'S  
21 PERCEIVED RISK OF TOBACCO USE?  
22 A. THE FIRST SURVEY OF WHICH I AM  
23 AWARE WAS DONE IN LATE 1949, ASKING ABOUT THE  
24 HARMFULNESS OR ALLEGED HARMFULNESS OF CIGARETTES.  
25 THERE WAS A SMATTERING IN THE EARLY  
26 1950'S, EARLY '54 AND THEN THE BALL THEN HAD TO  
27 PICK UP A PUBLIC POLLING IN THE 1960'S AND FURTHER  
28 ON.

3098

1 THE PRIVATE POLLING I REFERRED TO  
2 DATES FROM THE LATE 1950'S INTO THE '60'S AND 70'S  
3 AND HAS CONTINUED. OF COURSE, THE PUBLIC POLLING  
4 HAS CONTINUED TO THIS DAY.

5 Q. WHAT'S THE DIFFERENCE BETWEEN  
6 PRIVATE POLLING AND PUBLIC POLLING?  
7 A. PUBLIC POLLS ARE THOSE WHICH ARE  
8 CONDUCTED WITH A VIEW OF MAKING THE RESULTS KNOWN  
9 BROADLY, TYPICALLY THROUGH THE MEDIA, FROM THE TIME  
10 THE SURVEY HAS BEGUN. TYPICALLY, THIS IS THROUGH A  
11 COMMITMENT TO RELEASE ALL THE RESULTS OF THE  
12 SURVEY, THE QUESTION WORDINGS, THE NUMERICAL  
13 RESULTS AND THE LIKE.  
14 A PRIVATE POLLING OR COMMISSIONED  
15 WORK, NOT ALL COMMISSIONED WORK IS PRIVATE, THE  
16 PRIVATE POLLING TYPICALLY IS INTENDED TO BE NOT  
17 RELEASED TO THE PUBLIC BUT TO BE GIVEN TO THE  
18 SPONSOR'S ENTITY FOR WHATEVER PURPOSE ITS USE IT.  
19 SOMETIMES THOSE RESULTS ARE  
20 SELECTIVELY RELEASED TO THE PUBLIC, BUT GENERALLY  
21 SPEAKING, THEY ARE INTENDED TO BE FOR THE BENEFIT  
22 OF THE PEOPLE PAYING FOR THE SURVEY RESEARCH. THEY  
23 ARE NOT INTENDED, FROM THE BEGINNING, TO BE MADE  
24 PUBLIC AND MADE PROMPTLY AVAILABLE.  
25 Q. HAS ANY PRIVATE POLLING BEEN DONE  
26 IN THIS COUNTRY, TO YOUR KNOWLEDGE, ON THE ISSUE OF  
27 TOBACCO AND THE PUBLIC'S PERCEIVED RISK OF TOBACCO,  
28 OTHER THAN THE PRIVATE POLLING SPONSORED BY EITHER  
3099  
1 TOBACCO COMPANIES INDIVIDUALLY OR THEIR TRADE  
2 ORGANIZATION?  
3 A. I AM NOT AWARE OF SUCH. THAT  
4 DOESN'T MEAN I CAN STATE CATEGORICALLY IT DOES NOT  
5 HAPPEN. I AM JUST NOT AWARE OF IT.  
6 Q. WHAT I ACTUALLY MEANT TO ASK, SO TO  
7 YOUR KNOWLEDGE, THE ONLY PRIVATE POLLS ARE THOSE OF  
8 THE TOBACCO COMPANIES AND/OR THE TOBACCO INDUSTRY,  
9 GENERALLY?  
10 A. THAT IS CORRECT.  
11 Q. WHEN YOU TOLD THE JURY THAT THE  
12 FIRST POLL OF WHICH YOU WERE AWARE WAS IN '49, WHAT  
13 KIND WAS THAT, PUBLIC OR PRIVATE?  
14 A. THAT WAS A PUBLIC SURVEY CONDUCTED  
15 BY THE GALLUP ORGANIZATION.  
16 Q. AND WHEN YOU TOLD THE JURY, I  
17 THINK, THE NEXT NUMBER I HEARD WAS EITHER '50 OR  
18 '54, I AM NOT SURE WHICH, WHICH WAS IT?  
19 A. '54.  
20 Q. WAS THAT A PRIVATE POLL OR A PUBLIC  
21 POLL?  
22 A. THE FIRST ONE WAS A PUBLIC POLL.  
23 THERE WAS ALSO A PRIVATE POLLING DONE IN THE  
24 1950'S. I SHOULD CORRECT ONE THING I SAID VERY  
25 SLIGHTLY, THERE WAS DIRECT MARKET RESEARCH DONE FOR  
26 THE TOBACCO COMPANIES DONE EARLIER. I AM AWARE OF  
27 NO INDIRECT REFERENCES ASKING ABOUT BRAND  
28 PREFERENCE AND THINGS LIKE THAT. BUT TO MY  
3100  
1 KNOWLEDGE, THE AWARENESS OF HEALTH RISK WAS A LATER  
2 PHENOMENON IN PRIVATE POLLING.  
3 Q. THAT'S WHAT I AM INTERESTED IN YOU  
4 TALKING ABOUT, KNOWLEDGE OF HEALTH RISK. OKAY?  
5 A. YES.  
6 Q. SO IN 1949, GALLUP ASKED WHAT TO  
7 WHOM, HOW, PLEASE.  
8 A. YES. THERE WAS, ON A GALLUP  
9 SURVEY, A GALLUP POLL, THIS IS ONE OF THE PUBLIC

10 SURVEYS THAT THE GALLUP ORGANIZATION DID FROM TIME  
11 TO TIME, THAT WERE RELEASED IN THE MEDIA, A SERIES  
12 OF QUESTIONS, SOME OF WHICH HAD TO DO WITH A  
13 CONTROVERSY -- A REPORT IN THE "READERS' DIGEST," I  
14 BELIEVE, ABOUT TOBACCO SMOKING. AND THIS WAS ASKED  
15 OF A GENERAL POPULATION.

16 THERE ALSO, AT THE TIME, WERE  
17 QUESTIONS ABOUT THE -- WHETHER OR NOT CIGARETTE  
18 SMOKING WAS HARMFUL TO ONE'S HEALTH.

19 Q. SO THIS, THE YEAR AGAIN WAS?

20 A. 1949.

21 Q. '49.

22 DO YOU WANT TO TELL US THE RESULTS?

23 A. YES, ONE MOMENT WHILE I LOCATE IT.

24 YES, THE QUESTION WAS WHETHER OR  
25 NOT CIGARETTE SMOKING WAS HARMFUL TO YOUR HEALTH.  
26 AND IT FOUND APPROXIMATELY IN 1949, 60 PERCENT OF  
27 THE PEOPLE SAYING THAT THEY FELT THAT THERE WAS, IT  
28 WAS HARMFUL.

3101

1 Q. WHAT PERCENT?

2 A. 60, SIX ZERO.

3 Q. SIX ZERO, OKAY.

4 WHAT DID "HARMFUL TO YOUR HEALTH"

5 MEAN?

6 A. THAT WAS NOT FURTHER EXPLAINED.

7 IT WAS A SIMPLE QUESTION ABOUT  
8 HARMFUL AND LEAVING IT UP TO THE RESPONDENT TO  
9 DETERMINE WHAT THEY FELT THAT QUESTION WOULD MEAN.

10 Q. AND WAS THERE A PLACE ON THE SURVEY  
11 SO THAT THE RESPONDENT COULD SAY, HARMFUL TO MY  
12 HEALTH, I DON'T HAVE ENOUGH LUNG POWER WHEN I RUN;  
13 HARMFUL TO MY HEALTH, I GET BRONCHITIS SOMETIMES;  
14 HARMFUL TO MY HEALTH, I GET BAD BREATH; HARMFUL TO  
15 MY HEALTH, IT'S GOING TO KILL ME?

16 A. THAT SORT OF DATA WAS INCLUDED IN A  
17 LATER SURVEY IN THE 1950'S THAT ASKED ME TO  
18 ELABORATE ON WHAT THEY MEANT WHEN THEY WERE ASKED  
19 THE QUESTION ABOUT HARM.

20 Q. OKAY.

21 A. ANOTHER GALLUP QUESTION.

22 Q. BUT I AM STICKING WITH '49 FOR NOW.

23 SO WAS JUST THAT ONE QUESTION?

24 A. AS FAR AS I KNOW, YES.

25 Q. WHO GOT ASKED THAT QUESTION?

26 A. A GENERAL POPULATION SURVEY OF THE  
27 AMERICAN NATIONAL ADULT POPULATION.

28 Q. AND FROM WHAT YOU CAN SEE OF

3102

1 THIS -- WHEN SOMEONE IS DOING A POLL, IS IT  
2 IMPORTANT TO GET A GOOD CROSS-SECTION, SOME SORT OF  
3 AN ACCURATE CROSS-SECTION OF WHO YOU ARE GOING TO  
4 POLL?

5 A. YES, VERY MUCH SO.

6 THERE ARE TWO FUNDAMENTAL FACTORS  
7 THAT INFLUENCE WHETHER OR NOT A SURVEY IS RELIABLE.  
8 THE FIRST IS WHO IS INTERVIEWED,  
9 ARE THEY CHOSEN IN A WAY THAT ALLOWS YOU TO  
10 EXTRAPOLATE FROM THE ANSWERS GIVEN BY A SMALL  
11 SAMPLE TO THE BROADER POPULATION FROM WHICH THEY  
12 ARE DRAWN.

13 Q. SO EXTRAPOLATE IS A WORD THAT I  
14 HAVEN'T USED IN A LONG TIME.

15 DEFINE THAT.  
16 A. ESSENTIALLY, YOU ARE LOOKING AT THE  
17 RESULTS FROM A SMALL GROUP OF PEOPLE, A CERTAIN  
18 PERCENTAGE, WHO ANSWER A QUESTION A CERTAIN WAY AND  
19 YOU WANT TO BE ABLE TO STATE WHAT WOULD HAVE  
20 HAPPENED HAD YOU BEEN ABLE TO ASK EXACTLY THAT  
21 QUESTION OF THE ENTIRE POPULATION FROM WHICH THE  
22 SAMPLE WAS DRAWN.

23 IF THE SAMPLE IS SCIENTIFICALLY  
24 DRAWN, IF IT IS A RANDOM SAMPLE, IF IT DOES NOT  
25 HAVE STRONG BIASES, ONE CANNOT ONLY STATE THAT  
26 THERE'S NO SYSTEMATIC REASON FOR BELIEVING YOU  
27 WOULD GET A DIFFERENT RESULT IF YOU ASKED THE  
28 ENTIRE POPULATION, BUT YOU CAN EVEN STATE MATH

3103  
1 MATHEMATICALLY HOW LIKELY IT IS THAT YOU WOULD BE  
2 WITHIN A CERTAIN RANGE OF THE FIGURE THAT THE  
3 ACTUAL POLL FOUND IF YOU HAD ASKED EVERYONE IN THE  
4 ENTIRE POPULATION THE SAME QUESTION AT THE SAME  
5 TIME.

6 Q. OKAY. WE ARE TALKING RANGES, WHEN  
7 SOME OF US LOOK AT POLITICAL POLLS, THIS GUY IS  
8 GOING TO BE PRESIDENT, THIS GUY IS GOING TO BE  
9 PRESIDENT, PLUS 3 OR 4 PERCENT, THAT IS WHAT YOU  
10 ARE TALKING ABOUT?

11 A. THAT IS SOMETIMES CALLED THE MARGIN  
12 OF ERROR. AND IF THE SURVEY IS A RANDOM SURVEY,  
13 BUT ONLY IF THE SURVEY IS A RANDOM SURVEY, CAN YOU  
14 MATHEMATICALLY DERIVE HOW LIKELY IT IS, IF YOU TOOK  
15 REPEATED SAMPLES, THAT THEY WOULD VARY BY MORE THAN  
16 A CERTAIN AMOUNT IN EITHER DIRECTION.  
17 IT CAN BE MATHEMATICALLY PROVEN  
18 THAT IF YOU, FOR EXAMPLE, CONDUCT REPEATED RANDOM  
19 SAMPLES OF ROUGHLY A THOUSAND PEOPLE, AND IF YOU  
20 WERE TO LOOK AT THE RESULTS OF THAT, THAT IF THE  
21 TRUE FIGURE IN THE POPULATION WHO WOULD ANSWER A  
22 QUESTION 50 PERCENT IN ONE CATEGORY, IF THAT WERE  
23 THE TRUE POPULATION FIGURE, THERE'S ONLY A 1 IN 20  
24 CHANCE THAT YOU WOULD BE LOWER THAN 47 OR HIGHER  
25 THAN 53. THAT WOULD BE A 3 PERCENT MARGIN OF  
26 ERROR.

27 THAT REFERS TO THE LIKELIHOOD THAT  
28 YOU WOULD BE DIFFERENT SIMPLY BECAUSE OF THE RANDOM  
3104

1 CLASS OF WHO HAPPENED TO BE SELECTED TO COME TO THE  
2 SURVEY.

3 Q. OKAY. NOW, I AM GOING TO START  
4 ASKING SOME QUESTIONS THAT ARE GOING TO BE A LITTLE  
5 MORE INTERESTING. SO WHEN YOU ANSWER THEM, GO A  
6 LITTLE BIT SLOWER STILL.

7 A. I SHALL SO ENDEAVOR.

8 Q. YES?

9 A. YES.

10 Q. NOW, WHO, HOW WERE THE PEOPLE  
11 CHOSEN IN 1949?

12 A. IN 1949, THE GALLUP ORGANIZATION  
13 CHOSE THE PEOPLE THAT WERE IN THE SURVEY BY A  
14 STANDARD METHOD WHICH INVOLVED RANDOMLY SELECTING  
15 VARIOUS LOCATIONS AROUND THE COUNTRY, RANDOMLY  
16 SELECTING VARIOUS DWELLING UNITS WITHIN THE COUNTRY  
17 AND THEN INTERVIEWING PEOPLE IN THE HOUSEHOLD.  
18 THEY HAD A PROCEDURE THAT WOULD ASK  
19 TO SPEAK EITHER WITH A PERSON WHO WAS THE, I



20 BELIEVE IT WAS THE ELDEST MALE PRESENT OR THE  
21 YOUNGEST FEMALE PRESENT -- YOUNGEST MALE PRESENT OR  
22 ELDEST FEMALE PRESENT. THAT WAS TO COUNTER-BALANCE  
23 THE FACT THAT PEOPLE HAD DIFFERENT LIKELIHOODS OF  
24 BEING FOUND AT HOME AT VARIOUS TIMES.

25 Q. THAT WAS A RANDOM SAMPLE?

26 A. YES.

27 Q. SO YOU TOLD US ABOUT 1949.

28 WHEN IS THE NEXT POLL THAT WAS

3105

1 CONDUCTED OF WHICH YOU HAVE KNOWLEDGE?

2 A. IN 1954.

3 Q. WHO DID IT?

4 A. THERE WAS A GALLUP SURVEY IN

5 JANUARY OF 1954 AND ANOTHER GALLUP SURVEY IN JUNE

6 OR JULY OF 1954 ON THE ISSUE OF SMOKING HEALTH.

7 Q. PUBLIC?

8 A. YES.

9 Q. RANDOM?

10 A. YES.

11 Q. BOTH RANDOM?

12 A. YES.

13 Q. WHAT WAS THE QUESTION IN JANUARY OR

14 IF THERE WAS MORE THAN ONE QUESTION, LET'S HEAR

15 THAT TOO.

16 A. THERE WERE SEVERAL QUESTIONS

17 INCLUDED IN THAT SURVEY. THAT ONE FOLLOWED UP IN A

18 GREAT DEAL MORE DETAIL FOR WHAT WAS MEANT BY

19 VARIOUS ANSWERS THAT PEOPLE GAVE.

20 JUST ONE MOMENT WHILE I LOCATE

21 THAT.

22 THE FIRST QUESTION, AS I AM LOOKING

23 FOR THIS, ASKS PEOPLE WHETHER THEY CONSIDERED

24 CIGARETTE SMOKING HARMFUL TO THEIR HEALTH AND THEN

25 FOLLOWED UP BY ASKING IN DETAIL WHAT WAS MEANT BY

26 HARMFUL TO YOUR HEALTH.

27 A FOLLOWUP QUESTION ASKED PEOPLE IF

28 THEY BELIEVED THAT CIGARETTE SMOKING WAS A MAJOR

3106

1 CAUSE OF LUNG CANCER. AND ALL THESE THREE

2 QUESTIONS WERE ASKED ON THE SAME SURVEY.

3 AND JUST ONE MOMENT WHILE I LOCATE

4 THIS.

5 Q. YOU CAN NEVER FIND ONE OF THOSE

6 SURVEYS WHEN YOU NEED ONE.

7 A. WELL, IN THE COURSE OF LOOKING AT

8 SURVEY DATA ON SMOKING, I HAVE EXAMINED SOME

9 HUNDREDS OF SURVEY QUESTIONS. AND WHAT I AM

10 LOOKING FOR NOW WAS A SERIES OF PAPERS WHICH I

11 ACCIDENTALLY DROPPED AS WE WERE COMING UP HERE AND

12 GOT OUT OF ORDER. AND THAT'S WHY IT IS TAKING ME A

13 LITTLE TIME TO FIND IT.

14 THE COURT: WHY DON'T WE DO THIS. I WILL

15 GIVE YOU A CHANCE TO PUT THOSE PAPERS IN ORDER

16 BECAUSE WE HAVE TO DO SOMETHING OUTSIDE THE

17 PRESENCE OF THE JURY. AND THE JURY NEEDS TO HAVE A

18 BREAK THIS MORNING -- THIS AFTERNOON SO THIS WORKS

19 OUT FINE.

20 LADIES AND GENTLEMEN, WE WILL SEE

21 YOU AT TEN MINUTES PAST 3:00. DON'T DISCUSS THE

22 CASE WITH ANYONE.

23

24 (AT THIS TIME, A RECESS

25 WAS TAKEN.)

26 /// /// ///

27 /// /// ///

28 /// /// ///

3107

1 (THE FOLLOWING PROCEEDINGS  
2 WERE HELD IN OPEN COURT OUT  
3 OF THE PRESENCE OF THE JURY:)

4

5 THE COURT: WE ARE OUTSIDE THE PRESENCE.

6 THE COURT HAS BEEN ASKED TO LOOK AT

7 THE ADMISSIBILITY OF EVIDENCE OF, ESSENTIALLY,

8 CONDUCT OUTSIDE THE UNITED STATES FOR THE PURPOSE

9 OF, ARGUABLY, FOR THE PURPOSE OF SHOWING

10 REPREHENSIBILITY, THE REPREHENSIBILITY OF CONDUCT

11 INSIDE UNITED STATES.

12 AND THE PRINCIPAL CASE CITED IS THE

13 B.M.W. CASE INVOLVING THE PAINTING OF B.M.W.

14 AUTOMOBILES THAT WE HAVE ALL HEARD OF IN THE NEWS.

15 THIS IS THE FIRST TIME THIS COURT HAS HAD AN

16 OPPORTUNITY TO READ THE CASE.

17 IN THIS CASE, THE COURT STATES THAT

18 ALABAMA DOES NOT HAVE THE POWER, HOWEVER, TO PUNISH

19 B.M.W. FOR CONDUCT THAT WAS LAWFUL WHERE IT

20 OCCURRED AND THAT HAD NO IMPACT ON ALABAMA OR IT'S

21 RESIDENTS, WHICH, OF COURSE, IS THIS COURT'S

22 CONCERN HERE.

23 AND THEN IT NOTES THAT THE ALABAMA

24 SUPREME COURT PROPERLY ESCHEWED RELIANCE ON

25 B.M.W.'S OUT OF STATE CONDUCT AND BASED ITS

26 REMITTED AWARD SOLELY ON CONDUCT THAT OCCURRED

27 WITHIN ALABAMA.

28 THEN IN A FOOTNOTE CLOSELY

3108

1 ASSOCIATED WITH THIS LANGUAGE, IN FACT, FOLLOWING

2 IT, THE COURT, HOWEVER, GOES ON TO POINT OUT, OF

3 COURSE, THE FACT THAT THE ALABAMA SUPREME COURT

4 CORRECTLY CONCLUDED THAT IT WAS ERROR FOR THE JURY

5 TO USE THE NUMBER OF SALES IN OTHER STATES AS A

6 MULTIPLIER IN COMPUTING THE AMOUNT OF ITS PUNITIVE

7 DAMAGE SANCTION DOES NOT MEAN THAT EVIDENCE

8 DESCRIBING THE AMOUNT OF OUT OF STATE TRANSACTION

9 IS IRRELEVANT IN A CASE OF THIS KIND. SUCH

10 EVIDENCE MAY BE RELEVANT TO THE DETERMINATION OF

11 THE DEGREE OF REPREHENSIBILITY OF THE DEFENDANT'S

12 CONDUCT.

13 THAT, OF COURSE, IS DICTA IN THIS

14 CASE. AND IT'S THIS COURT'S INTERPRETATION, THAT

15 EMBEDDED IN THAT IS PROOF THAT THE CONDUCT OUTSIDE

16 OF THE UNITED STATES WOULD BE UNLAWFUL UNDER THE

17 OTHER COUNTRIES' LAWS BECAUSE FOR WE TO SIT HERE

18 AND PUNISH, USE THE PUNITIVE DAMAGES POWERS OF THIS

19 COURT TO PUNISH AN AMERICAN COMPANY FOR CONDUCT IN

20 A FOREIGN COUNTRY THAT IS LAWFUL, AND I THINK

21 WE HAVE TO START FROM THE PRESUMPTION, UNLESS

22 PROVED OTHERWISE, THAT THE CONDUCT, WHATEVER

23 CONDUCT IS BEING ALLEGED HERE, IS LAWFUL IN THESE

24 OTHER COUNTRIES, SEEMS TO ME TO BE COMPLETELY

25 BEYOND THE POWER OF THIS COURT, OR THE PRODDING OF

26 THIS COURT TO DO.

27 MR. PIUZE: I AM READY TO ADDRESS THAT.

28 THE COURT: ALL RIGHT.

3109

1 MR. PIUZE: ON TWO POINTS: FIRST OF ALL,  
2 I AM ASSUMING THE CONDUCT IS LAWFUL AS OPPOSED TO  
3 UNLAWFUL.  
4 AND I POINT OUT TO THE COURT THAT  
5 THE CONDUCT THAT WE ACCUSE PHILIP MORRIS OF IN THE  
6 UNITED STATES IS LAWFUL AS OPPOSED TO UNLAWFUL.  
7 IT IS LAWFUL TO SELL CIGARETTES IN  
8 THIS COUNTRY. IT IS LAWFUL. I AM NOT ACCUSING  
9 THEM OF UNLAWFUL ACTS IN THE UNITED STATES. I  
10 DON'T HAVE TO ACCUSE THEM OF UNLAWFUL ACTS IN THE  
11 UNITED STATES IN ORDER TO SHOW REPREHENSIBILITY.  
12 THE COURT: NO, NO. THE ARGUMENT IS THAT  
13 IT VIOLATES THE TORT LAWS OF THE UNITED STATES.  
14 AND I AM SAYING THAT THE CONDUCT, LET'S STEP AWAY  
15 FROM UNLAWFULNESS AND LET'S STEP TO TORTIOUSNESS.  
16 THE EVIDENCE WOULD HAVE TO BE THAT  
17 THE CONDUCT IN A FOREIGN COUNTRY WAS TORTIOUS,  
18 UNDER THEIR LAWS, OR WRONGFUL UNDER THEIR LAWS.  
19 MR. PIUZE: THAT'S A DIFFERENT QUESTION.  
20 THANK YOU. LET ME JUST SAY, I WAS  
21 FOLLOWING THE COURT'S LANGUAGE JUST THEN OF  
22 UNLAWFUL.  
23 THE COURT: FAIR ENOUGH.  
24 MR. PIUZE: AS IT TRAILS OUT TO ILLEGAL,  
25 I HAVE MADE MY POINT. IT'S LEGAL HERE. I ASSUME  
26 IT'S LEGAL THERE. I THINK THAT'S AN IRRELEVANT  
27 THING.  
28 AS FAR AS TORTIOUS, I DON'T THINK  
3110  
1 THAT'S THE BEST AND HERE'S WHY.  
2 I AM FAMILIAR WITH THAT B.M.W.  
3 VERSUS GORE CASE AND THE FIRST PART OF IT THAT THE  
4 COURT READ, BEFORE THE FOOTNOTE.  
5 WHAT'S GOING ON IS THE FOLLOWING,  
6 AS I AM SURE THE COURT KNOWS. THE INDIVIDUAL STATE  
7 HAD A LAW WHICH WAS VIOLATED AND A VIOLATION OF  
8 THAT LAW WAS ONE OF THE LYNCHPINS OR FOUNDATIONS  
9 UPON WHICH THE PLAINTIFF'S CASE WAS BUILT ENABLING  
10 THEM TO CLAIM PUNITIVE DAMAGES. THAT'S NOT OUR  
11 CASE.  
12 I DON'T CLAIM THEY ARE VIOLATING  
13 ANY CALIFORNIA STATE LAW, PHILIP MORRIS.  
14 THE COURT: CERTAINLY THE COMMON LAW OF  
15 THE STATE OF CALIFORNIA IS THE CLAIM.  
16 MR. PIUZE: BUT THAT'S NOT WHAT YOU SEE,  
17 YOUR HONOR. THAT'S NOT WHAT GORE VERSUS -- THAT'S  
18 NOT WHAT B.M.W. VERSUS GORE IS ABOUT.  
19 B.M.W. VERSUS GORE IS SPECIFICALLY  
20 DISCUSSING A STATUTORY LAW THAT IS BEING VIOLATED  
21 IN ALABAMA. NOT COMMONLY, SOMETHING ON THE BOOKS,  
22 A STATUTORY LAW WHICH WAS BEING VIOLATED.  
23 THE PLAINTIFF'S ATTORNEY, NOT BEING  
24 CONSERVATIVE AND CAUTIOUS LIKE ME, WANTED TO SAY,  
25 WELL, LOOK, IN ORDER TO ASSESS PUNITIVE DAMAGES,  
26 LET'S NOT JUST THINK ABOUT WHAT'S HAPPENED IN  
27 ALABAMA, LET'S THINK ABOUT WHAT'S HAPPENED IN THESE  
28 OTHER STATES. AND THAT WAS HIS MISTAKE ONLY  
3111  
1 BECAUSE THE BASIS OF HIS PUNITIVE DAMAGES IN  
2 ALABAMA WAS A STATUTORY, ON-THE-BOOKS LAW WHICH WAS  
3 BEING VIOLATED AND, OF COURSE, THESE OTHER STATES  
4 DIDN'T HAVE A SIMILAR LAW.  
5 THAT'S TRUE.

6 THE SUPREME COURT'S FOOTNOTE -- YOU  
7 KNOW, I DON'T KNOW, I GUESS DICTA IS SOMETIMES IN  
8 THE EYE OF THE BEHOLDER, AND I CAN'T QUARREL WITH  
9 OR ARGUE WITH THE FACT THAT IT IS OR ISN'T DICTA.  
10 AND IF THE COURT THINKS IT IS, FINE.  
11 BUT THE UNITED STATES SUPREME COURT  
12 HAS FLAT OUT SAID, WHETHER IN THE FOOTNOTE OR IN  
13 THE BODY, WHETHER IT IS DICTA OR NOT, IT HAS FLAT  
14 OUT SAID THAT IN ORDER TO SHOW REPREHENSIBILITY,  
15 WHAT'S GONE ON OTHER PLACES IS IMPORTANT.  
16 LET'S TALK ABOUT --  
17 THE COURT: BUT THE QUESTION THEN, BY  
18 WHOSE STANDARDS?  
19 SO LONG AS IT IS REPREHENSIBLE BY  
20 OUR STANDARDS, IT IS THEN RELEVANT TO MY CASE?  
21 MR. PIUZE: I THINK SO. LET ME TELL YOU  
22 WHAT I THINK HAS HAPPENED HERE.  
23 AND THIS, TO ME, IS NOT ONLY A  
24 SWORD BUT A SHIELD. IT'S A SWORD FOR THE OBVIOUS  
25 REASONS, BUT I AM GOING TO EXPLAIN WHY IT IS A  
26 SHIELD TO YOU AND I WILL DO IT BRIEFLY.  
27 IT IS ADMITTED NOW BY PHILIP MORRIS  
28 TO THIS JURY THAT THEIR PRODUCT CAUSES LUNG CANCER  
3112  
1 AND IS ADDICTIVE.  
2 PHILIP MORRIS IS GOING TO PLACES  
3 WHERE THERE IS MUCH LESS SOPHISTICATION --  
4 THE COURT: LET'S CUT THROUGH THIS. YOU  
5 DON'T NEED TO MAKE THOSE FACTUAL ARGUMENTS. BUT  
6 FOR THE PURPOSES OF THIS ARGUMENT, I WILL GIVE  
7 THOSE ARGUMENTS TO YOU BY DEFINITION FOR THE  
8 PURPOSES OF ANALYSIS ONLY, PHILIP MORRIS'S CONDUCT,  
9 FOR ANALYSIS PURPOSES ONLY, IS, BY DEFINITION,  
10 REPREHENSIBLE, ACCORDING TO AMERICAN LAW IN FOREIGN  
11 COUNTRIES FOR THE PURPOSES OF THIS ANALYSIS. LET'S  
12 TAKE IT THERE.  
13 BUT HOW DO WE STRETCH THAT AND SAY  
14 THAT, THEREFORE, THEY CAN BE PUNISHED UNDER OUR  
15 PUNITIVE DAMAGES LAW FOR CONDUCT WHICH IS NOT SHOWN  
16 TO BE REPREHENSIBLE WHERE IT IS OCCURRING?  
17 MR. PIUZE: WELL, YOUR HONOR, I ASK YOU,  
18 IS AN AMERICAN CORPORATION KILLING JAPANESE,  
19 CHINESE, THAI'S, KENYANS, LESS REPREHENSIBLE THAN  
20 AN AMERICAN CORPORATION KILLING AMERICANS?  
21 THE COURT: IT DEPENDS ON THE COUNTRY AND  
22 THEIR VIEWS.  
23 MR. PIUZE: I DON'T KNOW OF ANY --  
24 THE COURT: HOLD ON. THEIR VALUE  
25 SYSTEMS, THEIR STRUCTURES. THERE'S NO EVIDENCE, I  
26 HAVE NO IDEA WHAT THEIR VALUE SYSTEMS ARE, WHAT  
27 THEIR SOCIAL POLICIES ARE, WHAT THEY WANT TO  
28 ACHIEVE, WHAT THEY CONSIDER TO BE RIGHT AND WHAT  
3113  
1 THEY CONSIDER TO BE WRONG. AND FOR ME TO SIT IN  
2 JUDGMENT OF THEIR VIEWS ON THAT, WITH NO EVIDENCE  
3 WHATSOEVER, SEEMS TO ME TO BE COMPLETELY BEYOND THE  
4 POWERS OF THIS COURT.  
5 MR. PIUZE: OKAY. IT WOULD BE -- BEFORE  
6 I MOVE ON TO THE SHIELD, WHICH I AM ABOUT TO DO  
7 DIRECTLY, IT WOULD BE MY PARTING COMMENT THAT EVEN  
8 AS CONSERVATIVE AND CAUTIOUS AS I HAVE BEEN HERE IN  
9 PRESENTING EVIDENCE WITH MY EYE ON THE APPELLATE  
10 RECORD LATER ON, NO REASONABLE PERSON, BE IT A

11 JUDGE, A JUROR OR AN APPELLATE COURT JUDGE, OR A  
12 PERSON THAT RUNS THE TOBACCO INDUSTRY, NO  
13 REASONABLE PERSON COULD FIND OTHER THAN IT IS  
14 REPREHENSIBLE TO SELL A PRODUCT THAT YOU KNOW IS  
15 KILLING PEOPLE AFTER YOU HAVE ADMITTED IT'S A  
16 CARCINOGEN IN ONE COUNTRY.  
17 IT IS REPREHENSIBLE TO MOVE YOUR  
18 BUSINESS TO SOMEPLACE ELSE WHERE THEY DON'T KNOW IT  
19 IS AND START SELLING TO UNSUSPECTING BUYERS. BY  
20 DEFINITION, NO REASONABLE PERSON COULD DISAGREE.  
21 THE COURT: YOU MAY WELL BE RIGHT ABOUT  
22 THAT. AND I AM NOT GOING TO SIT HERE AND DEFEND  
23 THAT POSITION.  
24 BUT WHAT I WILL SAY TO YOU IS THAT  
25 I DOUBT SERIOUSLY THAT I, AS A SITTING CALIFORNIA  
26 JUDGE, HAVE THE POWER TO MAKE THOSE JUDGMENTS, OR  
27 CAN ALLOW A JURY, SITTING IN CALIFORNIA, TO MAKE  
28 THOSE JUDGMENTS.  
3114

1 MR. PIUZE: OKAY. AND HERE'S -- THIS IS  
2 NOT MEANT TO CHANGE THE COURT'S MIND RIGHT NOW, BUT  
3 THIS IS MY TAKE, BEFORE I GO TO THE SHIELD.  
4 MY TAKE IS, THIS EVIDENCE IS SO  
5 HORRIBLY PREJUDICIAL THAT YOU SHOULDN'T GET NEAR IT  
6 AND THE TRANSLATION OF THAT IS, THE CLOSER A  
7 TORT-FEASOR GETS FROM JUST BEING A NEGLIGENT TORT  
8 FEASOR TO BEING ADOLF HITLER'S INCARNATION, THE  
9 LESS THE JURY SHOULD HEAR ABOUT IT. AND I THINK  
10 THAT DEFIES LOGIC. I THINK THE MORE THE JURY  
11 SHOULD HEAR IT. THAT'S MY TAKE.  
12 ON THE SHIELD ISSUE, HERE'S WHAT I  
13 THINK IS GOING TO HAPPEN.  
14 MR. LEITER TOLD THE JURY IN OPENING  
15 STATEMENT THEY ARE GOING TO BRING IN PEOPLE THAT  
16 ARE GOING TO TELL THE JURY ABOUT THE NEW PHILIP  
17 MORRIS, WHAT PHILIP MORRIS IS DOING NOW. WE ALL  
18 KNOW THAT PHILIP MORRIS HAS ADVERTISEMENTS ON  
19 TELEVISION ALL OVER THE PLACE SAYING WHAT GOOD  
20 FOLKS THEY ARE, THEY ARE BRINGING WATER TO DRAUGHT  
21 VICTIMS, HOW THEY SPONSOR HOMELESS SHELTERS FOR  
22 ABUSED WOMEN AND HOW, GENERALLY, THEY TAKE CARE OF  
23 THE WORLD.  
24 THAT'S A SOPHISTICATED  
25 ORGANIZATION. GOOD FOR THEM. THEY HAVE THE RIGHT  
26 PUBLIC RELATIONS DEPARTMENT. GOOD FOR THEM. THEY  
27 KNOW WHAT THEY ARE DOING. THEY SPONSORED A LOT OF  
28 MONEY --

3115

1 THE COURT: THEY ARE NOT GOING TO BE  
2 PUTTING EVIDENCE IN HERE ABOUT THEIR CONDUCT  
3 OVERSEAS AND BEING A GOOD CORPORATE CITIZEN OF  
4 KENYA.  
5 MR. PIUZE: NO, YOUR HONOR. BUT WHEN  
6 THEY PUT EVIDENCE IN OVER HERE THAT WE HAVE STOPPED  
7 SELLING TO MINORS IN THE UNITED STATES, THAT  
8 WE HAVE STOPPED TARGETING MINORS IN THE UNITED  
9 STATES, THAT WE ARE NOW WARNING EVERYONE OF THE  
10 RISKS, THAT WE HAVE TAKEN DOWN OUR BILLBOARDS AND,  
11 YOU KNOW, MOST OF THESE THINGS THEY WERE COMPELLED  
12 TO DO BY THE LITIGATION THAT HAS PRECEDED THIS, BUT  
13 WHEN THEY TELL THE JURY ALL OF THESE POSITIVE  
14 THINGS, THAT IS A SWORD THEY ARE WIELDING AGAINST  
15 ME. AND I BELIEVE I SHOULD BE ABLE TO USE THE

16 EVIDENCE THAT WE ARE DISCUSSING RIGHT NOW AS A  
17 SHIELD AGAINST THAT BECAUSE IT'S TWO-FACED  
18 HYPOCRISY AND THE JURY SHOULD BE AWARE OF THAT.  
19 THE COURT: WELL, ALL RIGHT. AT THIS  
20 POINT, I AM NOT GOING TO MAKE THAT JUDGMENT. I  
21 DON'T SEE IT.  
22 MR. PIUZE: ALL RIGHT.  
23 MAY I ASK THE FOLLOWING, WHEN WE  
24 FINISH UP OUR AFTERNOON SESSION HERE WITH THIS  
25 WITNESS, WHO WILL NOT BE FINISHED THIS AFTERNOON ON  
26 DIRECT, CAN I PULL DR. STRAUSS UP HERE WITH NO JURY  
27 PRESENT.  
28 THE COURT: YOU MAY.

3116

1 MR. PIUZE: AND GET SOME TESTIMONY.  
2 THE COURT: YOU MAY MAKE AN OFFER OF  
3 PROOF ON THE RECORD. I AM GOING TO ALLOW THAT.  
4 MR. PIUZE: NOT JUST AN OFFER OF PROOF,  
5 JUST IN CASE THE COURT CHANGES ITS MIND, I WON'T  
6 HAVE TO PULL HIM BACK HERE FROM BOSTON.  
7 THE COURT: I WILL GIVE THE OTHER SIDE AN  
8 OPPORTUNITY TO CROSS-EXAMINE.  
9 MR. LEITER: THE PROBLEM IS,  
10 CROSS-EXAMINING ON THIS SUBJECT WOULD BE AN  
11 ENORMOUS, LENGTHY, COMPLICATED ISSUE FOR THE  
12 REASONS THAT YOUR HONOR JUST ARTICULATED.  
13 FOR MR. PIUZE TO WALK IN HERE THIS  
14 MORNING, TELL US THAT THIS IS WHAT HE WANTS TO DO  
15 AND EXPECT US TO BE ABLE TO CROSS-EXAMINE ABOUT  
16 INTERNATIONAL CIGARETTE SALES AND WHAT IS LAWFUL  
17 AND WHAT IS UNLAWFUL AND WHAT IS APPROPRIATE AND  
18 WHAT IS INAPPROPRIATE IN COUNTRIES ALL AROUND THE  
19 WORD, CANDIDLY, IS NOT SOMETHING WE ARE PREPARED TO  
20 DO TODAY. IT'S A COMPLETELY DIFFERENT TRIAL.  
21 SO THAT OUR RECORD IS CLEAR, I  
22 DON'T KNOW WHAT'S GOING TO HAPPEN DOWN THE ROAD,  
23 BUT IN NO WAY ARE OUR INTERESTS PROTECTED BY ASKING  
24 US, OFF THE TOP OF OUR HEADS, TO CROSS-EXAMINE ON  
25 THESE SUBJECTS.  
26 THE COURT: ALL RIGHT. WELL, JUST DO THE  
27 BEST YOU CAN AND I WILL HAVE MY RECORD AND I WILL  
28 DECIDE WHAT TO DO WITH IT LATER, IF ANYTHING.

3117

1 ALL RIGHT. IF WE MAY BRING OUR  
2 JURY IN.  
3 MR. CARLTON: YOUR HONOR, MAY I HAVE A  
4 HALF A MOMENT TO SEE IF DR. STRAUSS WAS DESIGNATED  
5 ON INTERNATIONAL MARKETING ISSUES BECAUSE I DON'T  
6 BELIEVE HE IS.  
7 THE COURT: WHY DON'T WE RAISE THAT ISSUE  
8 ONCE WE HAVE FINISHED WITH OUR JURY TODAY.  
9 MR. PIUZE: CAN I GET MY WITNESS BACK OUT  
10 OF THE JURY ROOM.  
11 THE COURT: YOU MAY.  
12 MR. PIUZE: I THINK HE HAS REACHED A  
13 VERDICT BACK THERE.  
14  
15 (THE FOLLOWING PROCEEDINGS  
16 WERE HELD IN OPEN COURT IN  
17 THE PRESENCE OF THE JURY.)  
18  
19 THE COURT: OUR JURY PANEL IS BACK WITH  
20 US.

21 LADIES AND GENTLEMEN, WE HAD A  
22 LITTLE BIT MORE THAT WE HAD TO DO OUTSIDE THE  
23 PRESENCE.  
24 ONE CLUE THAT WHEN YOU COME IN AND  
25 YOU COME IN A LITTLE BIT LATE AND YOU SEE ME  
26 SITTING HERE, THAT'S, IMMEDIATELY, YOU KNOW THAT I  
27 HAVE HAD TO DO SOMETHING OUTSIDE OF YOUR PRESENCE.  
28 AND I HAVE HAD A DISCUSSION WITH THE LAWYERS AND WE  
3118

1 HAVE TO DO IT IN THE COURTROOM ON THE RECORD BUT  
2 OUTSIDE OF YOUR PRESENCE. SO YOU WILL KNOW WHAT'S  
3 GOING ON JUST BY WHAT YOU SEE WHEN YOU WALK IN.  
4 ALL RIGHT, THAT HAVING BEEN SAID,  
5 PROCEED.

6  
7

8 G. DONALD FERREE,  
9 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
10 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
11 AND TESTIFIED FURTHER AS FOLLOWS:

12  
13 DIRECT EXAMINATION (RESUMED)  
14

15 BY MR. PIUZE:

16 Q. READY?

17 A. YES, I AM, SIR.

18 Q. I THINK I GOT THIS, I THINK WE WERE  
19 TALKING 195 --

20 A. -- 4.

21 Q. HAVE YOU FOUND IT?

22 A. YES, I DID. AND THANK YOU FOR YOUR  
23 INDULGENCE.

24 IN JANUARY 1954, THE GALLUP  
25 ORGANIZATION ASKED THE FOLLOWING QUESTIONS OF A  
26 NATIONAL SAMPLE OF ADULT AMERICANS.  
27 THE FIRST QUESTION WAS, DO YOU  
28 THINK CIGARETTE SMOKING IS HARMFUL OR NOT.

3119

1 AND 70 PERCENT SAID YES.  
2 THEY THEN FOLLOWED UP BY ASKING  
3 THOSE PERSONS WHO HAD SAID THAT CIGARETTE SMOKING  
4 WAS HARMFUL, IN WHAT WAY DO YOU THINK CIGARETTE  
5 SMOKING IS HARMFUL, AND ACCEPTED MULTIPLE ANSWERS.  
6 OF THE ANSWERS THAT WERE GIVEN,  
7 SEVEN PERCENT HAD SOMETHING TO DO WITH CANCER,  
8 EITHER LUNG CANCER OR CANCER OF THE FLOAT. ALL THE  
9 REMAINING ANSWERED SOMETHING TO DO WITH EITHER  
10 ANOTHER MEDICAL CONDITIONS OR SUCH THINGS AS  
11 HOARSENESS, IT MAKES ME FEEL TIRED, IT SMELLS BAD,  
12 WHATEVER.

13 SO THAT THE ELABORATION OF THE WORD  
14 "HARMFUL" CLEARLY INDICATED THAT YOU COULD NOT  
15 TRANSLATE HARMFUL INTO A CONCERN ABOUT CANCER.  
16 A FOLLOWUP QUESTION THEN ASKED,  
17 HAVE YOU HEARD OR READ ANYTHING -- HAVE YOU HEARD  
18 OR READ ANYTHING RECENTLY THAT CIGARETTE SMOKING  
19 MAY BE A CAUSE OF CANCER IN THE LUNG.  
20 AND 83 PERCENT OF THE PEOPLE SAID,  
21 YES, THEY HAD HEARD OR READ SOMETHING RECENTLY THAT  
22 CIGARETTE SMOKING MAY BE A CAUSE OF CANCER IN THE  
23 LUNG.

24 HOWEVER, THE VERY NEXT QUESTION WAS  
25 DO YOU THINK CIGARETTE SMOKING IS ONE OF THE CAUSES

26 OF LUNG CANCER OR NOT. 41 PERCENT SAID YES.  
27 SO FEWER THAN HALF OF THOSE WHO  
28 SAID THAT THEY HAD HEARD OF THE ALLEGATIONS THAT  
3120  
1 CIGARETTE SMOKING MIGHT BE A CAUSE OF CANCER, ONE  
2 SAID, THAT, IN FACT, THEY BELIEVED THAT IT WAS ONE  
3 OF THE CAUSES OF CANCER OF THE LUNG.  
4 Q. ARE THOSE THE THREE QUESTIONS?  
5 A. YES.  
6 Q. I WANT TO DISSECT THEM A LITTLE  
7 BIT, DO A LITTLE MATH ON THEM.  
8 OKAY?  
9 A. YES, YOU MAY.  
10 Q. SO LET'S TAKE THEM ONE AT A TIME  
11 AND I WILL DO THE MATH.  
12 GO AHEAD.  
13 QUESTION 1.  
14 A. 70 PERCENT OF THE OVERALL PUBLIC  
15 SAID THAT THEY BELIEVE, QUOTE, THEY ANSWERED YES TO  
16 THE QUESTION, DO YOU THINK CIGARETTE SMOKING IS  
17 HARMFUL OR NOT, WITHOUT ANY DEFINITION OF THE WORD  
18 "HARMFUL."  
19 Q. SO 7 OUT OF 10 SAID YES?  
20 A. THAT IS CORRECT.  
21 Q. NOW, THE NEXT QUESTION THAT YOU ARE  
22 ABOUT TO TELL US WAS ONLY ASKED OF THOSE 7 OUT OF  
23 10?  
24 A. THAT IS CORRECT.  
25 Q. BECAUSE 3 OUT OF 10 ALREADY HAVE A  
26 PASS BECAUSE THEY DON'T THINK IT IS HARMFUL?  
27 A. CORRECT.  
28 Q. NOW, OF THE REMAINING 7 THAT ARE  
3121  
1 THERE, LET'S HEAR THE QUESTIONING.  
2 A. OKAY. "IN WHAT WAY DO YOU THINK  
3 CIGARETTE SMOKING IS HARMFUL?" AND WERE RECORDED  
4 AND THEN WERE CATEGORIZED INTO ONE OR MORE BOXES.  
5 OF THE OVERALL SAMPLE, THREE AND  
6 ONE-HALF PERCENT SAID IT CAUSES LUNG CANCER.  
7 THAT'S WHAT THEY MEANT BY "HARMFUL."  
8 Q. STOP FOR A SECOND.  
9 WHEN YOU SAY "OVERALL," WHAT DO YOU  
10 MEAN?  
11 A. IN OTHER WORDS, THAT THE WAY IT  
12 ACTUALLY WORKED OUT IS THAT 5 PERCENT OF THE 70,  
13 WHICH IS THE SAME AS 3.5 PERCENT OF THE TOTAL  
14 POPULATION SAID LUNG CANCER AS THE ELABORATE ANSWER  
15 TO WHAT YOU MEAN BY "HARMFUL."  
16 Q. STOP RIGHT THERE, BECAUSE THAT'S  
17 THE MATH THAT I WAS GOING TO DO.  
18 IF YOU TAKE THE 70 PERCENT WHO SAID  
19 THERE IS SOME HARM AND FIVE PERCENT OF THEM SAY  
20 THEY THINK IT CAUSES LUNG CANCER?  
21 A. RIGHT. THAT TRANSLATES TO THREE  
22 AND ONE-HALF PERCENT OF THE TOTAL SALES.  
23 Q. SO IF YOU TAKE THE WHOLE HUNDRED  
24 PEOPLE TO START WITH, THREE AND A HALF OUT OF A  
25 HUNDRED THINK --  
26 A. SAID THAT IT WAS HARMFUL AND SAID  
27 "LUNG CANCER" WHEN THEY WERE ASKED WHAT DO YOU MEAN  
28 BY "HARMFUL."  
3122  
1 Q. FINE. THREE AND A HALF OUT OF A



2 HUNDRED?  
3 A. CORRECT.  
4 Q. LET'S HEAR THE OTHER -- IF IT  
5 WASN'T GOING TO BE LUNG CANCER, WHAT WAS HARMFUL?  
6 A. WELL, OTHER ANSWERS INCLUDED,  
7 CANCER OF THE THROAT OR CANCER OF SOME OTHER PART  
8 OF THE BODY. THAT WAS 3 PERCENT OF THOSE 70, WHICH  
9 WAS 2.1 PERCENT OF THE NATIONAL POPULATION.  
10 TUBERCULOSIS WAS 2 PERCENT.  
11 ALLERGIES OR ASTHMA WAS 1 PERCENT.  
12 IT'S BAD FOR YOUR LUNGS AND YOUR  
13 BRONCHIAL TUBES WAS 31 PERCENT.  
14 IT SHORTENS YOUR BREATH, 12  
15 PERCENT, AGAIN, OF THE 70.  
16 IT IS HARMFUL TO YOUR HEART AND/OR  
17 IT CAUSES HEARTBURN, 6 PERCENT. THOSE WERE  
18 CLASSIFIED THE SAME WAY.  
19 IT'S HARMFUL TO YOUR GENERAL  
20 WELL-BEING OR YOUR HEALTH.  
21 IT MAKES YOU FEEL RUNDOWN OR DOPY,  
22 20 PERCENT.  
23 IT MAKES YOU COUGH, 12 PERCENT.  
24 IT HURTS YOUR NOSE OR YOUR SINUSES,  
25 11 PERCENT.  
26 AGAIN, ALL THESE ARE -- 11 PERCENT  
27 OF THE 70.  
28 IT HINDERS YOUR APPETITE, CAUSES  
3123  
1 INDIGESTION, EFFECTS YOUR WEIGHT, 5 PERCENT.  
2 IT'S A POISON, 5 PERCENT.  
3 IT HURTS ULCERS, 1 PERCENT.  
4 IT CAUSES HEARING FAILURE, 1  
5 PERCENT.  
6 INTERFERES WITH YOUR CIRCULATION, 1  
7 PERCENT.  
8 THEN WHAT GALLUP CHARACTERIZED AS  
9 NON-EFFECTS, MAKES PEOPLE NERVOUS, 6 PERCENT.  
10 EXPENSIVE, HABIT-FORMING OR LOOSEN  
11 YOUR SELF-DISCIPLINE, 6 PERCENT.  
12 IT CAUSES BAD BREATH, YELLOWS YOUR  
13 TEETH AND YOUR FINGERS, 2 PERCENT.  
14 IMPOLITE OR STINKS UP THE HOUSE, 1  
15 PERCENT.  
16 AND UNABLE TO ANSWER, NO FURTHER  
17 DETAIL, 12 PERCENT.  
18 Q. SO HOW MANY PERCENT OF THE PEOPLE  
19 THOUGHT IT CAUSED HEARTBURN?  
20 A. HEART BURN OR HEART PROBLEMS, WHICH  
21 WERE LUMPED TOGETHER, WAS A TOTAL OF 6 PERCENT OF  
22 THE 70. THAT IS TO SAY 4.2 PERCENT OF THE NATIONAL  
23 POPULATION.  
24 Q. CROSS-EXAMINATION CAUSES HEARTBURN  
25 TOO, SOMETIMES, DOESN'T IT?  
26 A. IT MAY IN GENERAL AND IN THIS  
27 PARTICULAR CASE, WE WILL WAIT TO SEE.  
28 Q. SO PUTTING TOGETHER, I AM  
3124  
1 INTERESTED, WE ARE INTERESTED HERE IN CANCER.  
2 PUTTING TOGETHER THE LUNG CANCER ANSWER, PUTTING  
3 TOGETHER THE THROAT CANCER ANSWER, WHAT DO YOU GET,  
4 5 OUT OF A HUNDRED?  
5 A. 5.6, A LITTLE OVER 5 OUT OF A  
6 HUNDRED.

7 Q. EXCUSE ME, 5.6 OUT OF A HUNDRED?  
8 A. THAT IS CORRECT, SIR.  
9 Q. SO ALTHOUGH THE OVERWHELMING  
10 MAJORITY, 70 PERCENT THOUGHT THERE MIGHT BE SOME  
11 NEGATIVE HEALTH EFFECTS TO SMOKING?  
12 A. YES, OR SPECIFICALLY, LABELED AS  
13 HARMFUL.  
14 Q. HARMFUL, MOST OF IT FELL INTO THESE  
15 OTHER BAD BREATH, WHATEVER, WHATEVER, WHATEVER?  
16 A. IT DEMONSTRATES A VERY BROAD RANGE  
17 OF HARMFUL.  
18 Q. WHICH INCLUDED, IT IS GOING TO  
19 AFFECT MY WIND?  
20 A. YES.  
21 Q. IT IS GOING TO CAUSE ME TO COUGH?  
22 A. YES.  
23 Q. SO HAVE YOU TOLD US TWO OF THE  
24 QUESTIONS?  
25 A. YES. THE QUESTION OF WHETHER IT  
26 WAS HARMFUL AND WHAT WAS MEANT.  
27 THEN A FOLLOWUP QUESTION ON THE  
28 SAME SURVEY SAID, HAVE YOU HEARD OR READ ANYTHING  
3125  
1 RECENTLY THAT CIGARETTE SMOKING MAY BE A CAUSE OF  
2 CANCER OF THE LUNG.  
3 83 PERCENT IN THIS JANUARY 1954  
4 SURVEY SAID YES, THEY HAD HEARD OR READ ANYTHING  
5 RECENTLY THAT CIGARETTE SMOKING MAY BE A CAUSE OF  
6 CANCER OF THE LUNG.  
7 AND THEN THE IMMEDIATELY FOLLOWING  
8 QUESTION, DO YOU THINK CIGARETTE SMOKING IS ONE OF  
9 THE CAUSES OF LUNG CANCER OR NOT.  
10 41 PERCENT OF THE TOTAL POPULATION,  
11 AND THE PEOPLE WERE ASKED THAT QUESTION, EVEN IF  
12 THEY DIDN'T SAY THEY HEARD OR READ ANYTHING ABOUT  
13 THE REPORTS, 41 PERCENT OF THE TOTAL POPULATION  
14 SAID THAT THEY BELIEVED THAT CIGARETTE SMOKE WAS  
15 ONE OF THE CAUSES OF LUNG CANCER.  
16 Q. OKAY.  
17 I GUESS I KNOW THE ANSWER TO THIS,  
18 BUT IN THAT PARTICULAR POLL, WHERE THEY ASKED, IS  
19 SMOG THE CAUSE OF LUNG CANCER OR IS A, B, C, D?  
20 A. ON THIS PARTICULAR SURVEY, NO.  
21 Q. SO THERE'S A CONCEPT HERE THAT  
22 QUESTION NUMBER 3 OR 3 AND 3-A AND B, WHATEVER,  
23 BRINGS UP THAT I WANT TO DISCUSS WITH YOU NOW FOR  
24 THE JURY.  
25 TWICE AS MANY PEOPLE HEARD SMOKING  
26 CAUSES LUNG CANCER AS BELIEVED IT; RIGHT?  
27 A. THAT IS CORRECT.  
28 Q. IS IT UNCOMMON IN POLLING TO FIND  
3126  
1 THAT JUST BECAUSE PEOPLE HEAR SOMETHING, THAT MEANS  
2 THEY BELIEVE IT?  
3 A. IT IS NOT AT ALL UNCOMMON. THERE  
4 ARE A WIDE VARIETY OF THINGS, PARTICULARLY THINGS  
5 WHICH RECEIVE A LOT OF MEDIA ATTENTION THAT PEOPLE  
6 WILL TELL YOU ACCURATELY ENOUGH THEY HAVE HEARD OR  
7 READ REPORTS ABOUT. THESE OFTENTIMES INVOLVE  
8 ALLEGATIONS OF PERSON'S BEHAVIOR OR THE TRUTH OR  
9 ALLEGED TRUTH OF VARIOUS FACTS.  
10 HAVING HEARD OF THAT IS SIMPLY NOT  
11 THE SAME THING AS BELIEVING THAT THOSE ALLEGATIONS

12 ARE TRUE.  
13 WE CAN SEE CLEARLY HERE ONE EXAMPLE  
14 WHERE PEOPLE HEARD REPORTS ABOUT CIGARETTE SMOKING  
15 BEING A CAUSE OF CANCER OF THE LUNG BUT FEWER THAN  
16 HALF OF THE PEOPLE WHO SAID THAT THEY HAD HEARD  
17 THAT SAID THEY BELIEVED THAT CIGARETTE SMOKING WAS  
18 ONE OF THE CAUSES OF CANCER OF THE LUNG.  
19 IN MANY OTHER CIRCUMSTANCES, AND I  
20 MENTIONED TO YOU THAT I SEVERAL TIMES TESTIFIED IN  
21 LEGAL CAUSES, I HAVE BEEN ABLE TO NOTE THAT PEOPLE  
22 HAVE OFTENTIMES HEARD OF THINGS WITHOUT NECESSARILY  
23 COMING TO CONCLUSIONS, PEOPLE HAVE HEARD THAT  
24 VARIOUS, VERY VISIBLE DEFENDANTS ARE CHARGED WITH  
25 CRIMES, THAT DOES NOT MEAN THAT THEY BELIEVE THAT  
26 THOSE PEOPLE NECESSARILY ARE GUILTY OF CRIME.  
27 PEOPLE HEARD THE ALLEGATIONS ABOUT  
28 CIGARETTES AND LUNG CANCER, THAT NO MORE MEANT THAT  
3127  
1 THEY NECESSARILY BELIEVED THAT CIGARETTE SMOKING  
2 WAS GUILTY OF CAUSING LUNG CANCER.  
3 THE FACT THAT THEY HAD HEARD  
4 REPORTS OF O. J. SIMPSON WAS ACCUSED OF MURDER  
5 MEANT THAT THEY BELIEVED HE DID IT.  
6 Q. LET'S TAKE ANOTHER EXAMPLE BESIDES  
7 CRIMINAL.  
8 HOW ABOUT UFO'S?  
9 A. WELL, THE GALLUP ORGANIZATION  
10 THEMSELVES CONDUCTED A SURVEY IN, I BELIEVE IT WAS  
11 1987. THAT IS A VERY INTERESTING PARALLEL TO THIS  
12 PARTICULAR CASE. AND I WILL ANSWER YOUR QUESTION.  
13 IT DEMONSTRATES VERY SPECIFICALLY  
14 THAT PEOPLE HAVING HEARD OF THE REPORT OF SOMETHING  
15 DO NOT NECESSARILY BELIEVE THAT IT IS TRUE.  
16 AND I WILL FIND THAT FOR YOU IN  
17 JUST ONE MOMENT.  
18 Q. THAT'S ONE THING ABOUT UFO'S THEY  
19 ARE HARD TO FIND.  
20 A. OR TO IDENTIFY IF ONE BELIEVES THAT  
21 ONE HAS.  
22 IN FEBRUARY, 1987 THE GALLUP  
23 ORGANIZATION ASKED ON A SURVEY, HAVE YOU HEARD OR  
24 READ ABOUT UFO'S AND THEY DISCOVERED THAT 88  
25 PERCENT OF THE AMERICAN PUBLIC SAID, YES, THEY HAD.  
26 AND THEN THERE WAS A FOLLOWUP  
27 QUESTION, IN YOUR OPINION, ARE UFO'S SOMETHING  
28 REAL, AND 49 PERCENT OF THE PUBLIC SAID THAT THEY  
3128  
1 BELIEVED THAT THEY WERE REAL.  
2 SO CLEARLY, ROUGHLY HALF OF THOSE  
3 WHO SAID THAT THEY HAD HEARD OF UFO'S BELIEVE THAT  
4 THEY WERE REAL.  
5 AGAIN, A CLEAR DEMONSTRATION THAT  
6 HEARING ALLEGATIONS, HEARING REPORTS DOES NOT  
7 NECESSARILY MEAN THAT ONE BELIEVES THAT THE REPORTS  
8 ARE TRUE.  
9 Q. OKAY. SO THAT POINT IS MADE.  
10 SO THANK YOU.  
11 LET'S GO TO THE SECOND 1954 GALLUP  
12 POLL, PLEASE.  
13 YOU TOLD US ONE WAS DONE EARLY IN  
14 THE YEAR, ONE WAS DONE LATE IN THE YEAR, REMEMBER  
15 THAT?  
16 A. YES, THAT IS CORRECT.

17 Q. HOW LATE IN THE YEAR?  
18 A. IN JULY.  
19 Q. DO YOU HAPPEN TO KNOW, AS A RESULT  
20 OF YOUR BACKGROUND AND YOUR RESEARCH AND JUST DOING  
21 WHAT YOU DO, WHY THERE WERE TWO DIFFERENT POLES ON  
22 THE SAME STUFF SO CLOSE TOGETHER?  
23 A. BECAUSE THERE HAD BEEN VARIOUS  
24 MEDIA -- MY SUPPOSITION, BECAUSE I KNOW IT IS  
25 COINCIDENCE, WAS THAT THERE WERE VARIOUS MEDIA  
26 REPORTS ABOUT CIGARETTE SMOKING COMING OUT IN 1954  
27 AND THE GALLUP ORGANIZATION WANTS TO UPDATES ITS  
28 EARLY 1954 QUESTION WITH A PARALLEL QUESTIONING  
3129  
1 ASKING WHETHER PEOPLE HAD HEARD THE REPORTS OF THAT  
2 SECOND SURVEY FOUND 90 PERCENT, NOT 83, HAD HEARD.  
3 SO IT WAS ALREADY HIGH BUT IT WENT UP EVEN MORE.  
4 Q. SO IN JULY, 90 PERCENT OF THE  
5 PEOPLE HAD HEARD ALLEGATIONS THAT LUNG CANCER AND  
6 TOBACCO WERE LINKED?  
7 A. YES. HOWEVER, ON A FOLLOWUP  
8 QUESTION ON THAT JULY SURVEY, AN IDENTICAL 41  
9 PERCENT, THE SAME PERCENTAGE AS IN JANUARY, SAID  
10 THAT IT BELIEVED THAT CIGARETTE SMOKING WAS ONE OF  
11 CAUSES OF LUNG CANCER.  
12 SO INCREASED AWARENESS WAS NOT  
13 RELATED TO ANY INCREASED BELIEF THAT THE  
14 ALLEGATIONS WERE TRUE.  
15 Q. MORE PEOPLE HAD HEARD IT BUT THE  
16 NEW PEOPLE THAT HEARD IT DIDN'T BELIEVE IT?  
17 A. THAT IS CORRECT.  
18 Q. WERE THERE ANY OTHER QUESTIONS THAT  
19 WERE ASKED IN THE SECOND '54 SURVEY THAT YOU THINK  
20 ARE RELEVANT?  
21 I DON'T WANT TO GO THROUGH THE  
22 QUESTION JUST FOR THE SAKE OF GOING THROUGH THE  
23 QUESTIONS. BUT IF YOU THINK THEY ARE IMPORTANT FOR  
24 OUR DISCUSSION HERE.  
25 A. I BELIEVE THAT THOSE ARE THE CORE  
26 QUESTIONS THAT FAIRLY REFLECT THE OPINION ASKED BY  
27 GALLUP ON THIS SURVEY.  
28 Q. THANKS. SO FAR WE HAVE DISCUSSED  
3130  
1 THREE SURVEYS OF TWO DIFFERENT YEARS. WHAT'S THE  
2 NEXT ONE OF WHICH YOU ARE AWARE?  
3 A. THERE WERE -- WELL, FIRST OF ALL,  
4 LET ME ANSWER THE QUESTION BY POINTING OUT THAT  
5 BEGINNING IN THE 1950'S AND ONWARD, THERE WERE  
6 HUNDREDS OF SURVEY QUESTIONS HAVE HAVING TO DO WITH  
7 SMOKING.  
8 I LOOKED, MYSELF, AT EVERY SINGLE  
9 ONE OF THOSE THAT WERE IDENTIFIED BY THE ROPER  
10 CENTERS RETRIEVAL SYSTEM AND LOOKED FOR OVERALL  
11 PATTERNS, SMOKING ON VARIOUS OCCASIONS ABOUT  
12 CERTAIN EMBLEMATIC QUESTIONS WHICH I BELIEVE FAIRLY  
13 REFLECT THE OVERALL BODY WITHOUT NECESSARILY  
14 DETAILING EVERY SINGLE QUESTION. IN OTHER WORDS,  
15 WHAT I WILL TALK ABOUT, THERE IS NOTHING THAT  
16 CONTRADICTS IT IN THE BODY OF SURVEY DATA BUT IT  
17 WOULD TAKE YEARS TO GO THROUGH LITERALLY EVERY  
18 INDIVIDUAL QUESTION.  
19 Q. I AM NOT GOING TO DO IT, OBVIOUSLY.  
20 EVEN THOUGH WE HAVE A NEW COURT  
21 REPORTER WHO HAS RESTED, YOU STILL GOT TO SLOW

22 DOWN.

23 WHAT'S AN EMBLEMATIC QUESTION?

24 A. AN EMBLEMATIC QUESTION IS A SURVEY

25 QUESTION WHICH, ON ITS FACE, IS A REASONABLE SURVEY

26 QUESTION WHICH IS ASKED BY AN ORGANIZATION USING

27 REASONABLE METHODS SO THAT ONE CAN MAKE THE

28 INFERENCE FROM THE SAMPLE TO THE POPULATION ABOUT

3131

1 WHICH I WAS EARLIER SPEAKING AND WHICH CAN BE TAKEN

2 AS REPRESENTATIVE OF A LARGER BODY OF SURVEY

3 QUESTIONS WHEN IT IS EXAMINED BY AN EXPERT IN

4 SURVEY RESEARCH TO MAKE SURE THAT IT WAS NOT

5 CHERRY-PICKING QUESTIONS WHICH ARE ATYPICAL. IT

6 WOULD BE TYPICAL. IT WOULD NOT BE CONTRADICTED BY

7 THE BROAD BODY OF SURVEY DATA. IT WOULD NOT BE

8 SOMETHING THAT WAS AN INDIVIDUAL OUTLIER. THAT'S

9 WHAT I MEAN BY "EMBLEMATIC."

10 Q. WELL, IN DEFINING "EMBLEMATIC" YOU

11 HAVE GIVEN US A NEW TERM, "OUTLIER." WHAT'S THAT

12 ALL ABOUT?

13 A. "OUTLIER" IS A TERM OF ART IN

14 STATISTICS REFERRING TO THE FACT THAT IN VARIOUS

15 DISTRIBUTIONS, WHETHER IT BE PEOPLE'S INCOME OR

16 THEIR EDUCATIONAL ATTAINMENT OR THEIR VIEWS ABOUT

17 THE PRESIDENT OF THE UNITED STATES, YOU CAN PLOT

18 OUT THE FREQUENCY WHICH VARIOUS OPINIONS ARE HELD.

19 OUTLIERS REFERS TO THOSE PEOPLE ON

20 THE EXTREME HIGH END OR LOW END.

21 I MENTIONED EARLIER WITH A MARGIN

22 OF ERROR THAT YOU CAN SAY THAT THERE IS A CERTAIN

23 CHANCE, 95 PERCENT CHANCE, TO BE SPECIFIC, THAT IF

24 YOU CONDUCTED REPEATED SURVEYS OF ROUGHLY 1,000

25 PEOPLE YOU WOULD BE HIGHER THAN 53 PERCENT OR LOWER

26 THAN 47 PERCENT IF THE QUESTION ON A PARTICULAR

27 SURVEY SHOWED 50 PERCENT FALLING IN ONE CATEGORY.

28 IT IS POSSIBLE THAT YOU WILL FALL

3132

1 OUTSIDE THAT REALM. THAT WOULD BE AN OUTLIER.

2 IF, IN EXAMINING THESE HUNDREDS OF

3 QUESTIONS, I FOUND TWO OR THREE THAT WERE

4 COMPLETELY ATYPICAL, I WOULD NOT USE THEM AS

5 EMBLEMATIC QUESTIONS.

6 Q. GIVE US AN EXAMPLE OF AN EMBLEMATIC

7 QUESTION.

8 A. AN EMBLEMATIC QUESTION WOULD BE ONE

9 WHICH FOUND EITHER BECAUSE OF SIMPLE CHANCE OR

10 BECAUSE OF QUESTION WORDING, SOMETHING WHICH WAS AT

11 VARIANCE WITH THE BROAD FINDINGS OF SURVEY DATA.

12 IT WOULD BE A QUESTION WHERE ONE MIGHT SAY, WELL,

13 WHY IS IT THAT OF ALL THE SURVEYS CONDUCTED, JUST

14 TO TAKE ONE EXAMPLE, IN THE LAST PRESIDENTIAL

15 ELECTION, LEADING INTO THE PERIOD OF EARLY NOVEMBER

16 WHEN THE ELECTION WAS HELD, WHEN MOST SURVEYS WERE

17 SHOWING A VERY CLOSE ELECTION, ONE PARTICULAR

18 GALLUP SURVEY SHOWED ON ONE DAY A VERY LARGE LEAD

19 FOR GEORGE BUSH AND A SIMILAR SURVEY SHOWED THE

20 VERY NEXT DAY A VERY SIMILAR SIZE LEAD FOR AL GORE,

21 BOTH OF WHICH WERE WAY LARGER THAN THE MARGINS

22 BEING SHOWN BY OTHER SURVEYS AT THE SAME TIME.

23 THAT WOULD BE AN OUTLIER. THEY CAN

24 HAPPEN. THE ADVANTAGE OF LOOKING AT MANY, MANY

25 SURVEY QUESTIONS IS THAT THE OVERALL PATTERN

26 INCREASES ONE'S CERTAINTY THAT THE INDIVIDUAL

27 QUESTIONS ARE NOT A QUIRK, BUT RATHER REPRESENT THE  
28 UNDERLYING REALITY.

3133

1 Q. WHAT ABOUT, GIVE US AN EXAMPLE OF  
2 AN EMBLEMATIC QUESTION, IS THAT WHAT YOU JUST DID?

3 A. AN EMBLEMATIC QUESTION WOULD BE  
4 CHOOSING ONE OF THE SERIOUS OF QUESTIONS SHOWING  
5 THE MARGIN BETWEEN BUSH AND GORE, FOR EXAMPLE,  
6 BEING VERY CLOSE, WHERE IT'S QUESTION WORDING WAS  
7 NOT ATYPICAL OF OTHER QUESTIONS TRYING TO GET AT  
8 THE SAME TOPIC, AND IT'S RESULT WERE NOT ATYPICAL  
9 OF OTHER QUESTIONS THAT WERE TRYING TO ADDRESS THE  
10 SAME CONCERN AT THE SAME TIME.

11 Q. THERE WERE HUNDREDS AND HUNDREDS OF  
12 SURVEYS WHICH WOULD TAKE DAYS AND DAYS TO DISCUSS  
13 AND WE DON'T HAVE IT. HOW DO YOU PROPOSE TO  
14 SUMMARIZE THE RESULTS OF YOUR RESEARCH IN LOOKING  
15 AT ALL OF THESE SURVEYS?

16 BECAUSE I AM INTERESTED IN LETTING  
17 THE JURY KNOW WHAT PUBLIC PERCEPTION WAS OF THE  
18 HEALTH RISK OF TOBACCO, GENERALLY, OR LUNG CANCER  
19 RISK OF TOBACCO GENERALLY, OVER A PERIOD OF TIME.

20 A. FIRST, I WILL DISCUSS PARTICULAR  
21 QUESTIONS FORMING A CROSS TIME TREND FROM 1949  
22 UNTIL 1990'S ABOUT THE PERCEPTION OF CIGARETTE  
23 SMOKING IS HARMFUL AND THE PERCEPTION CIGARETTE  
24 SMOKING CAUSES LUNG CANCER.

25 I WILL ALSO LOOK AT VARIOUS ASPECTS  
26 OF THE ISSUE HAVING TO DO WITH SUCH THINGS AS  
27 WHETHER PEOPLE BELIEVE THE HEALTH RISKS HAVE BEEN  
28 OVER-STATED OR UNDERSTATED, WHETHER PEOPLE BELIEVE

3134

1 THAT ANY AMOUNT OF CIGARETTE SMOKE IS DANGEROUS OR  
2 HAS TO SMOKE A CERTAIN AMOUNT FOR IT TO BE  
3 DANGEROUS, LOOK AT THE PERCEPTION THAT THE  
4 INDIVIDUAL LEVEL OF THE RISK THAT SMOKERS  
5 EXPERIENCE OR BELIEVE THEY EXPERIENCE FROM  
6 CIGARETTE SMOKING, A SERIES OF QUESTIONS FROM THE  
7 ROPER SURVEYS CONDUCTED FOR THE TOBACCO INDUSTRY OR  
8 INDIVIDUAL COMPANIES IN THE 1970'S THAT FORM A  
9 TREND SHOWING ATTITUDES TOWARD THE TOBACCO  
10 COMPANIES AND ALSO TOWARD CIGARETTE SMOKING AND ITS  
11 RISK, ALL OF WHICH WILL BE ILLUSTRATIONS OF  
12 VARIOUS -- DEPENDS OF THIS QUESTION OF RISK.

13 THEY WON'T BE EVERY SINGLE QUESTION  
14 THAT WAS ASKED. THEY WILL BE QUESTIONS WHICH I  
15 BELIEVE, USING MY EXPERTISE AS A SURVEY RESEARCH  
16 PROFESSIONAL, FAIRLY REFLECT THE BROADER BODY OF  
17 DATA WITHOUT LITERALLY CITING EVERY SINGLE  
18 QUESTION.

19 Q. CAN YOU REPEAT THAT.

20 A. NO, NOT EXACTLY, BUT I CERTAINLY  
21 COULD IN SUBSTANCE.

22 Q. WHAT'S A CROSS TIME TREND, WHAT  
23 DOES THAT MEAN?

24 A. A CROSS TIME TREND IS WHEN A  
25 QUESTION WHICH IS IDENTICALLY WORDED OR ESSENTIALLY  
26 IDENTICALLY WORDED IS ASKED AT MORE THAN ONE POINT  
27 IN TIME THAT ALLOWS ONE TO TRACE CHANGES OF BELIEF  
28 OR ATTITUDE OR PERCEPTION BY COMPARING THOSE

3135

1 RESULTS.

2 IF, FOR EXAMPLE, THE PUBLIC IS

3 ASKED IN A NUMBER OF DIFFERENT POINTS IN TIME  
4 WHETHER OR NOT CIGARETTE SMOKING IS HARMFUL, WITH  
5 QUESTION WORDINGS WHICH ARE FAIRLY COMPARABLE WHICH  
6 ARE EITHER IDENTICAL OR VERY CLOSE TO, THEN ONE CAN  
7 TRACE CHANGES IN THAT ATTITUDE OF CROSS TIME.  
8 Q. OKAY. THAT WAS THE FIRST PART OF  
9 YOUR ANSWER, SO THAT'S WHERE I WANT TO START, WITH  
10 CROSS TIME TRENDS. OKAY?  
11 A. YES.  
12 Q. AND THE TIME THAT YOU ARE CROSSING  
13 IS FROM WHEN TO WHEN?  
14 A. IN THE FIRST INSTANT, I WILL BE  
15 COMPARING QUESTIONS FROM THE LATE 19 -- LATE 1940'S  
16 OR THE EARLY 1950'S THROUGH TO 1999 ON, THE BASIC  
17 PERCEPTION OF CIGARETTE SMOKING AS BEING EITHER  
18 HARMFUL OR BEING A CAUSE OF LUNG CANCER.  
19 Q. WHY DON'T YOU DO THAT.  
20 A. IF ONE --  
21 MR. LEITER: ONE POINT. EXCUSE ME.  
22 BEFORE A SLIDE IS PUT UP OR SHOWN OR DISCUSSED, MAY  
23 WE HAVE A FOUNDATION AS TO WHERE THE QUESTION COMES  
24 FROM.  
25 THE COURT: FAIR ENOUGH.  
26 THE WITNESS: YES, THE QUESTIONS I AM  
27 ABOUT TO DESCRIBE WERE ALL FROM PUBLICLY DONE  
28 GALLUP SURVEYS IN THE TIME PERIOD IF 1954 TO 1999.  
3136  
1 LATER ON I WILL BE DISCUSSING  
2 SURVEYS FROM OTHER ORGANIZATIONS BUT THIS  
3 PARTICULAR ONE ARE ALL FROM GALLUP ORGANIZATIONS.  
4 Q BY MR. PIUZE: BEFORE YOU GO, LET  
5 ME JUST SAY ONE OTHER THING. IF THERE ARE, MAYBE  
6 HE KNOWS MORE ABOUT WHAT YOU ARE GOING TO SAY THAN  
7 I DO, BUT IF THERE ARE SLIDES TO BE SHOWN, AND IT  
8 REQUIRES ME TO PUT SOMETHING UP ON THE ELMO, YOU  
9 GOT TO CUE ME IN.  
10 A. OKAY.  
11 Q. PLEASE.  
12 A. WHAT I AM ABOUT TO DISCUSS WAS  
13 BASED UPON A SLIDE THAT I PRESENTED AT A CONFERENCE  
14 IN LATE 1999 WHICH WAS DATA THAT I PULLED TO GO  
15 FROM THE ROPER ARCHIVE. IT WAS A SLIDE THAT WAS,  
16 THAT WAS HIGHLIGHTED. I DON'T HAVE THE COMPUTER  
17 PRESENTATION COPY WITH ME. BUT IT IS THE DATA  
18 WHICH I, MYSELF, ASSEMBLED FROM THE ROPER ARCHIVE  
19 TRACING THESE GALLUP QUESTIONS ACROSS TIME, IT WAS  
20 MY SLIDE NUMBER 10.  
21 Q. HANG ON, PLEASE.  
22 HOW ABOUT -- WHERE IS THE LAST  
23 NUMBER I HAD, MR. CLERK?  
24 THE CLERK: 8002.103, SO YOU CAN GO TO  
25 104.  
26 MR. LEITER: CAN I CONFER WITH MR. PIUZE.  
27 MR. PIUZE: LET'S MAKE THIS 8002.501.  
28  
3137  
1 \* (EXHIBIT 8002.501, SLIDE,  
2 MARKED FOR I.D.)  
3  
4 THE WITNESS: IT'S GOING TO HAVE TO BE  
5 SMALLER.  
6 MR. PIUZE: I KNOW. I AM SERVING TWO  
7 DIFFERENT MASTERS NOW, YOU AND MR. LEITER.

8 HERE WE ARE.  
9 THE WITNESS: NOW, THE TIME LINE AT THE  
10 BOTTOM SHOWS YEARS FROM '49 TO '99. THERE ARE  
11 THREE GRAPHS. THIS IS SOMEWHAT DIFFICULT TO READ,  
12 HOWEVER, THE FIRST, THE BOTTOM LINE, THE ONE THAT,  
13 THE LOWER OF THE TWO, TO BEGIN, AT THE FAR LEFT  
14 MARGIN, IS THE PERCEPTION -- THE PROPORTION OF  
15 PERSONS WHO SAY THAT THEY SMOKE CIGARETTES.  
16 THE LINE THAT BEGINS IMMEDIATELY  
17 ABOVE IT IS THE PROPORTION OF PERSONS SAYING THAT  
18 CIGARETTE SMOKING IS HARMFUL.  
19 THE LINE WHICH BEGINS IN 1954, THE  
20 FIRST TIME THE QUESTION WAS ASKED, WAS, IS THE LINE  
21 AS TO WHETHER OR NOT CIGARETTE SMOKING IS ONE OF  
22 THE CAUSES OF LUNG CANCER.  
23 SO HANG ON FOR A SECOND.  
24 Q. THAT'S THE PERCENTAGE OF PEOPLE?  
25 A. WHO SMOKE.  
26 Q. THAT SMOKED OVER A 50 YEAR PERIOD?  
27 A. THAT IS CORRECT.  
28 Q. GO DOWN.  
3138  
1 A. AND THERE IS A SECULAR DECLINE,  
2 THAT IS CORRECT.  
3 Q. THIS IS THE PERCENTAGE OF PEOPLE  
4 WHO THINK THAT CIGARETTE SMOKING --  
5 A. -- IS ONE OF THE CAUSES OF LUNG  
6 CANCER.  
7 Q. THE MIDDLE ONE?  
8 A. THAT IS CORRECT.  
9 Q. WHAT'S THE TOP ONE?  
10 A. THE FIRST PORTION OF PEOPLE THAT  
11 SAY THAT CIGARETTE SMOKE IS HARMFUL WITHOUT  
12 SPECIFYING WHAT HARM IS.  
13 Q. OKAY. SO WHAT DOES THAT ALL PROVE?  
14 A. WHAT THAT DEMONSTRATES IS THAT  
15 WHILE THE PROPORTION OF PERSONS SMOKING WENT DOWN,  
16 AND THIS IS NOT ONLY INTERESTING IN ITSELF, BUT IS  
17 RELATED TO HOW LIKELY IT IS THAT AN INDIVIDUAL  
18 PERSON WILL KNOW SOMEONE WHO IS A SMOKER AND  
19 THEREFORE HAS TO DO WITH THEIR GENERAL ATTITUDE  
20 TOWARD SMOKING.  
21 SUBSTANTIVELY, TWO MOST IMPORTANT  
22 LINES THERE ARE THE PROPORTION SAYING CIGARETTE  
23 SMOKE IS HARMFUL AND THE PROPORTION SAYING IT  
24 CAUSES LUNG CANCER.  
25 AT THE BEGINNING OF THE PERIOD YOU  
26 WILL SEE THERE IS A RATHER SUBSTANTIAL DIFFERENCE  
27 BETWEEN THOSE TO.  
28 FOR EXAMPLE, IN THE 1954 POINT,  
3139  
1 THAT'S THE FIRST ONE, 41 PERCENT. THAT'S THE  
2 QUESTION WE WERE JUST DESCRIBING SAID THAT  
3 CIGARETTE SMOKE IS ONE OF THE CAUSES OF LUNG  
4 CANCER, THIS BEING AT A TIME WHEN WE WERE SEEING  
5 SOME 70 PERCENT SAYING THAT CIGARETTE SMOKE WAS  
6 HARMFUL, THE QUESTION WE DISCUSSED. BOTH OF THOSE  
7 LINES TREND UPWARD.  
8 THEY APPROXIMATE ONE AT THE  
9 BEGINNING IN THE VERY LATE 1980'S, EARLY 1990'S  
10 WHEN THEY BOTH FLATTEN OUT APPROACHING WHAT COULD  
11 REASONABLY BE CALLED CONSENSUS.  
12 PRIOR TO THAT TIME, THE PROPORTION



13 WHO LABELED CIGARETTE SMOKING AS HARMFUL, AGAIN  
14 WITHOUT SPECIFYING WHAT HARMFUL MEANS, GOES UP.  
15 THE PROPORTION SAYING THAT IT IS A CAUSE IN THEIR  
16 BELIEF OF LUNG CANCER IS ALSO GOING UP, THOUGH IT  
17 LAGS UNTIL WE GET TO THAT TIMEFRAME ROUGHLY AT THE  
18 BEGINNING OF 1990.

19 Q. TELL ME IF THIS SOUNDS RIGHT. IT  
20 ISN'T UNTIL 1989, APPROXIMATELY, THAT IN THE MINDS  
21 OF THE PEOPLE BEING POLLED IN AMERICA, HARMFUL AND  
22 CANCER MEAN BASICALLY THE SAME THING?

23 A. THAT IS CORRECT.

24 Q. YOU SAID AS PART OF YOUR LAST LONG  
25 ANSWER SOMETHING ABOUT 1989, APPROACHES A  
26 CONSENSUS.

27 REMEMBER THAT?

28 A. YES, I DID.

3140

1 Q. WHAT DO YOU MEAN BY THAT?

2 A. I AM USING THE WORD "CONSENSUS"

3 HERE TO MEAN A SITUATION WHERE THE OPINION OR  
4 BELIEF, WHATEVER ONE IS SPEAKING ABOUT, IS  
5 ONE-SIDED, SO THAT PEOPLE WHO DISSENT FROM IT ARE A  
6 VERY SMALL MINORITY.

7 YOU MIGHT SAY THAT BETWEEN A 50-50,  
8 WHICH IS AN EVEN SPLIT, ON THE AREA, MOVING UP  
9 TOWARDS A HIGHER LEVEL, WE ARE TALKING ABOUT  
10 MAJORITIES THAT ARE GETTING PROGRESSIVELY LARGER  
11 BUT CLEARLY MAY STILL LEAVE A VERY SIGNIFICANT  
12 MINORITY WHO DISSENT FROM THE MAJORITY VIEW.

13 AND I AM USING CONSENSUS HERE TO  
14 MEAN A RELATIVELY SMALL, ROUGHLY, 1 IN 10 OR  
15 SMALLER MINORITY DISSENTING FROM THE MAJORITY.

16 Q. LET'S ASSUME HERE THAT THIS ISN'T  
17 THE COURTROOM AND WE ARE NOT TALKING ABOUT TOBACCO  
18 AND YOU ARE EITHER BACK IN STORRS, CONNECTICUT OR  
19 MADISON, WISCONSIN DOING SOME POLLING FOR THE STATE  
20 OF CONNECTICUT OR FOR WISCONSIN. IS THAT HOW YOU  
21 USE THE TERM CONSENSUS IN THOSE CIRCUMSTANCES?

22 A. GENERALLY SPEAKING, YES.

23 Q. IS CONSENSUS ASSOCIATED WITH A  
24 NUMBER, USUALLY, A MATHEMATICAL NUMBER?

25 A. THERE IS NOT A MAGICAL HARD AND  
26 FAST NUMBER THAT SAYS 89.9 PERCENT ISN'T CONSENSUS,  
27 9.61 PERCENT IS OR SOMETHING LIKE THAT. IT WOULD  
28 HAVE TO DO WITH THE NOTION OF WHETHER OR NOT A

3141

1 PERSON ON THE MINORITY SIDE WOULD PERCEIVE  
2 THEMSELVES AS VERY STRIKINGLY OVERWHELMED AND/OR  
3 WHETHER A PERSON IN THE MAJORITY SIDE WOULD  
4 PERCEIVE THAT THERE WERE VERY FEW PEOPLE WHO  
5 DISSENTED FROM THEM.

6 IT IS NOT A MAGICAL FIGURE BUT  
7 WOULD HAVE TO DO, ESSENTIALLY, WITH HOW LIKELY IT  
8 IS THAT ONE WOULD ENCOUNTER SOMEONE CHOSEN AT  
9 RANDOM WHO WOULD DIFFER FROM THE MAJORITY VIEW.

10 I AM NOT USING CONSENSUS AS A  
11 SYNONYM FOR UNANIMINITY, I AM USING IT FOR A VERY  
12 STRONG MAJORITY.

13 Q. IS YOUR USE OF THE WORD CONSENSUS  
14 HERE THAT YOU ARE TELLING THE JURY, THE WAY THE  
15 WORD CONSENSUS IS USED IN THE GENERAL POLLING  
16 COMMUNITY AS IT GOES ABOUT ITS DAY-TO-DAY BUSINESS  
17 OF POLLING?

18 A. THERE IS NO STANDARD DEFINITION,  
19 HOWEVER, MY UNDERSTANDING OF MY FELLOW POLLSTERS  
20 AND SURVEY RESEARCHERS WOULD BE THAT VERY FEW WOULD  
21 DISAGREE IF I CHARACTERIZED 90 PERCENT AS A  
22 CONSENSUS, IF SOMEONE WERE TO STAND UP AND SAY BUT  
23 75 PERCENT OF THE PEOPLE FEEL THIS WAY, THERE'S A  
24 CLEAR CONSENSUS AND OTHERS WOULD STAND UP AND SAY  
25 NO THERE ISN'T, THERE'S A SUBSTANTIAL BODY OF  
26 OPINION ON THE OTHER SIDE.

27 Q. THAT'S SORT OF WHERE I WANT TO GO  
28 TO, 3 OUT OF 75 PERCENT, 3 OUT OF 4?  
3142

1 A. IS A STRONG MAJORITY BUT NOT A  
2 CONSENSUS. IT STILL MEANS THAT IF YOU GATHERED  
3 FOUR PEOPLE IN A ROOM CHOSEN AT RANDOM, YOU WOULD  
4 EXPECT ONE OF THEM TO DISSENT FROM THE OTHER THREE  
5 AND WHILE CLEARLY THAT PUTS THAT PERSON IN THE  
6 MINORITY, IT DOES NOT MEAN THAT THEY CAN BE  
7 IGNORED. IT DOESN'T MEAN THEY CAN BE TREATED AS  
8 TRIVIAL. IT DOESN'T MEAN THAT THEY CAN BE TREATED  
9 FOR ALL INTENTS AND PURPOSES AS THOUGH THEY DIDN'T  
10 EXIST.

11 THAT'S ONE OF THE REASONS WHY I  
12 CHOOSE THAT ROUGHLY 1 IN 10, 1 IN 10 FIGURE.  
13 AGAIN, NOT AS AN ABSOLUTE BRIGHT  
14 LINE, BUT AS A NUMBER BELOW WHICH I WOULD BE  
15 EXTREMELY UNCOMFORTABLE, AND I THINK MOST OF MY  
16 FELLOW POLLSTERS WOULD AS WELL SAYING THAT A  
17 CONSENSUS EXISTED.

18 Q. THANKS.

19 NOW I AM DONE WITH THIS.

20 A. YOU ARE.

21 Q. WHAT'S THE NEXT POINT?

22 A. THE NEXT BODY OF OPINION, AGAIN,  
23 DRAWN IN GALLUP DATA WAS THE SLIDE I PRESENT AT THE  
24 MELE PRESENTATION LABELED SLIDE 11 THAT HAS A TITLE  
25 "CAUSE OF SPECIFIC DISEASES" THAT TRACE, FOR THE  
26 SAME APPROXIMATE TIME PERIOD, PEOPLE'S BELIEF THAT  
27 CIGARETTE SMOKING IS A CAUSE OF VARIOUS HEALTH  
28 CONDITIONS, INCLUDING BUT NOT LIMITED TO LUNG  
3143

1 CANCER.

2 A. THIS TIME SERIES BEGINS IN 1957.

3 Q. HANG ON ONE SECOND, PLEASE.

4 BECAUSE THIS IS HARD TO READ.

5 A. AGREED.

6 Q. FOR THE JURY, THIS SAYS --

7 A. HEART. THE QUESTION IN PARTICULAR  
8 WAS WHETHER OR NOT CIGARETTE SMOKING CAUSED HEART  
9 DISEASE.

10 BIRTH DEFECT.

11 Q. BIRTH DEFECT.

12 LUNG CANCER.

13 A. CANCER OF THE THROAT.

14 Q. OKAY.

15 A. THE REASON THAT ONE DOES NOT SEE

16 ALL THE LINES AT ALL POINTS IS THAT GALLUP DID NOT  
17 ASK THE QUESTION AT EACH OF THOSE CATEGORIES OF ALL  
18 POINTS.

19 '57 WAS THE FIRST TIME THEY ASKED

20 ABOUT HEART DISEASE AND LUNG CANCER ON THE SAME

21 SURVEY. IN '77 THEY ASKED ABOUT BIRTH DEFECTS,

22 THROAT CANCER, HEART DISEASE AND LUNG CANCER AND

23 THE TRENDS CONTINUE FROM THAT POINT.

24 PRIOR TO 1977 THEY DIDN'T ASK ABOUT

25 THROAT CANCER AND BIRTH DEFECT.

26 Q. LET'S START OVER WITH THE EARLIEST

27 QUESTION, THE EARLIEST QUESTION HAD TO DO WITH?

28 A. WHETHER, IN THE 1957 SURVEY,

3144

1 WHETHER CIGARETTE SMOKE WAS A CAUSE OF LUNG CANCER.

2 JUST UNDER 50 PERCENT SAID YES.

3 AND OF HEART DISEASE -- PARDON ME,

4 NOT AND, SEPARATE QUESTION, WHETHER IT WAS THE

5 CAUSE OF HEART DISEASE. AND 37 PERCENT, I BELIEVE

6 IT WAS, SAID, YES, IT WAS.

7 Q. NOW, I AM GOING TO APOLOGIZE FOR

8 PUTTING UP A POOR COPY HERE. BUT DOES THE LUNG

9 CANCER NUMBER ACTUALLY GO DOWN INITIALLY?

10 A. YES, IT DOES, AS DOES THE HEART

11 DISEASE, PARALLEL DROP.

12 Q. OKAY.

13 A. THEN THE LINES AT THAT POINT ALWAYS

14 GO UP OR STAY CONSTANT. BEGINNING WITH THE POINT

15 WHERE THAT LITTLE DIP REVERSES, THERE YOU SEE A

16 SUBSTANTIAL GAP BETWEEN HEART DISEASE AND LUNG

17 CANCER, 50 PERCENT SAYING IT WAS THE CAUSE OF LUNG

18 CANCER AND APPROXIMATELY 34 PERCENT SAYING IT IS A

19 CAUSE OF HEART DISEASE.

20 THEY BOTH GO UP TO THE LATE 1960'S

21 WHEN LUNG CANCER REACHES 70 PERCENT AND HEART

22 DISEASE REACHES 60 PERCENT AND THEN IN 1977 SURVEY,

23 JUST OVER 40 PERCENT SAY THAT CIGARETTES ARE A

24 CAUSE OF BIRTH DEFECTS.

25 APPROXIMATELY 65 PERCENT SAY THAT

26 THEY ARE A CAUSE OF HEART DISEASE, THAT JUST UNDER

27 80 PERCENT SAY THEY ARE A CAUSE OF THROAT CANCER

28 AND JUST ABOVE 80 PERCENT SAY THEY ARE A CAUSE OF

3145

1 LUNG CANCER.

2 THAT LUNG CANCER LINE WITH

3 DIFFERENT POINTS IS WHAT WE SAW IN THE PREVIOUS

4 SLIDE AND YOU WILL NOTICE THAT THEY THEN CONTINUE

5 TO GO UP. LUNG CANCER IS ALWAYS AT THE TOP WITH

6 THROAT CANCER COMING NEXT, HEART DISEASE NEXT,

7 THOUGH IT IS OCCASIONALLY TIED WITH HEART DISEASE,

8 AND BIRTH DEFECTS THE LOWEST.

9 THIS SHOWS THAT BY THE LATE 1990'S,

10 OF THE PROPORTION OF PEOPLE BELIEVING THAT

11 CIGARETTE SMOKING WAS A CAUSE OF BIRTH DEFECTS, OF

12 HEART DISEASE, OF CANCER OF THE THROAT AND OF LUNG

13 CANCER, ALL WERE QUITE HIGH. LUNG CANCER REMAINED,

14 HOWEVER, THE HIGHEST AND THE ONLY ONE THAT CLEARLY

15 EXCEEDED 90 PERCENT.

16 Q. OKAY. NOW, WHY PUT UP THIS SLIDE

17 FOR OTHER PROBLEMS, KNOWING THAT THIS IS A CASE

18 INVOLVING LUNG CANCER?

19 A. THIS SLIDE, FIRST OF ALL, WAS

20 LARGELY DESIGNED FOR PRESENTATION OF PUBLIC

21 ATTITUDES TOWARD THE RISK OF CIGARETTE SMOKING DONE

22 FOR THE MELE CONFERENCE IN 1999.

23 AND IT DEMONSTRATES THE WAY THAT

24 PERCEPTIONS OF LUNG CANCER FIT IN TO OTHER HEALTH

25 PROBLEMS, PARALLEL, IN MANY WAYS, TO THAT QUESTION

26 I READ IN SOME DETAIL IN 1954 SHOWING THAT HARM DID

27 NOT RELATE TO LUNG CANCER AND THAT OTHER CAUSES,

28 PARDON ME, OTHER HEALTH PROBLEMS WERE TYPICALLY,  
3146

1 MORE LIKELY -- MANY OTHERS WERE MORE LIKELY TO BE  
2 STATED THAN LUNG CANCER WAS BACK THEN.

3 Q. LET ME SEE IF I CAN CHALLENGE YOU.

4 WHEN SLIDE NUMBER 10 WAS PUT UP,

5 YOU TALKED ABOUT A CONSENSUS BEING REACHED IN 1989

6 WHEN THE NUMBERS WERE APPROXIMATELY 90 PERCENT. SO

7 NOW I WANT TO SHOW YOU THAT THE QUESTION ABOUT

8 HEART HAS NEVER REACHED 90 PERCENT?

9 A. THAT IS CORRECT.

10 Q. AND ARE YOU SAYING THAT MEANS THAT

11 THERE'S NEVER BEEN, BY YOUR USE OF THE TERM, A

12 CONSENSUS HERE IN AMERICA THAT SMOKING CAUSES HEART  
13 PROBLEMS?

14 A. YES, I WOULD.

15 CONSENSUS, IT SAYS THAT THE

16 PROPORTION OF PEOPLE WHO DO NOT AGREE, WHO DO NOT

17 ANSWER AFFIRMATIVELY TO THE QUESTION WHETHER

18 SMOKING IS A CAUSE OF HEART DISEASE HAS THAT

19 PROPORTION IN THIS GALLUP SERIES DOES, IS ALWAYS AT

20 LEAST 1 IN 5 OR 1 IN 6. THAT'S A MINORITY, TO BE

21 SURE, BUT NONETHELESS, AS I WAS USING THE WORD

22 "CONSENSUS" EARLIER, NOT QUITE A CONSENSUS.

23 Q. USING YOUR DEFINITION THEN, THE

24 SAME CAN BE SAID OF THROAT CANCER, THERE'S NEVER

25 BEEN A CONSENSUS THAT SMOKING CAUSES THROAT CANCER

26 AND BIRTH DEFECTS, THERE'S NEVER BEEN A CONSENSUS

27 THAT SMOKING CAUSES BIRTH DEFECTS?

28 A. I WOULD DISAGREE WITH YOU SLIGHTLY

3147

1 ON THE THROAT CANCER WHICH DOES HIT 90 IN THAT VERY

2 LAST SURVEY, JUST GETS TO IT.

3 Q. I AM SORRY, OVER HERE?

4 A. YES, THAT IS CORRECT.

5 HOWEVER, YOU ARE CORRECT ON THE

6 OTHERS, AND MY POINT HERE IS, WHAT YOU SAY IS

7 CORRECT, IT'S ALSO THE CASE THAT IT DEMONSTRATES

8 THERE IS AN INCREASING BELIEF, OVER TIME,

9 INCREASING MAJORITY OVER TIME ABOUT THE LINK

10 BETWEEN SMOKING AND THESE VARIOUS HEALTH CAUSES BUT

11 THAT YOU ARE RIGHT ABOUT THE ABSOLUTE LEVEL, IT

12 REMAINS A SIGNIFICANT MINORITY WHO DO NOT SAY

13 AFFIRMATIVELY SERIOUS SMOKING IS A CAUSE OF THIS

14 DISEASE, EVEN AS LATE AS THE 1990'S.

15 Q. IT'S NOT A MATTER OF ME BEING

16 RIGHT.

17 A. YOUR CHARACTERIZATION WAS CORRECT.

18 Q. I AM CHALLENGING YOU IN YOUR

19 DEFINITION, SEE, AND SO IF YOUR DEFINITION HOLDS,

20 YOU ARE TELLING THE JURY THERE HAS NEVER BEEN A

21 CONSENSUS FROM A POLLING POINT OF VIEW, THAT

22 SMOKING CAUSES HEART DISEASE OR BIRTH DEFECTS?

23 A. I WOULD SAY THAT, I WOULD ALSO

24 POINT OUT THAT I AM PROVIDING THE NUMBERS THAT BACK

25 UP MY CONTENTION, IF PEOPLE CHOOSE TO DISAGREE WITH

26 MY DEFINITION OF CONSENSUS, THAT'S ONE THING.

27 BUT CLEARLY, WE SEE THAT THERE IS A

28 MINORITY RANGING IN SIZE UP TO THE CASE OF BIRTH

3148

1 DEFECTS, A LITTLE BITS OVER 30 PERCENT THAT DO NOT

2 AFFIRMATIVELY SAY SMOKING CAUSES BIRTH DEFECTS.

3 Q. IF WE TOOK A POLL OF THE 18 MEMBERS

4 OF THE JURY WITH 50 SECONDS LEFT TO GO, DO YOU  
5 THINK I SHOULD ASK ANOTHER QUESTION?  
6 THE COURT: DON'T ANSWER THAT.  
7 ALL RIGHT, LADIES AND GENTLEMEN,  
8 IT'S TWO MINUTES BEFORE 4:00 AND THAT'S FINE.  
9 WE WILL GO AHEAD AND TAKE OUR  
10 AFTERNOON RECESS. WE WILL SEE YOU TOMORROW MORNING  
11 AT 8:45. DON'T DISCUSS THE CASE WITH ANYONE.  
12  
13 (THE FOLLOWING PROCEEDINGS  
14 WERE HELD IN OPEN COURT OUT  
15 OF THE PRESENCE OF THE JURY:)  
16  
17 THE COURT: SIR, IF YOU WOULD TAKE THE  
18 STAND AGAIN.  
19 MR. CARLTON: YOUR HONOR, SO WE  
20 UNDERSTAND WHAT WE ARE DOING HERE, AS I UNDERSTOOD  
21 WHAT YOU WERE SAYING PREVIOUSLY, THIS IS AN  
22 OPPORTUNITY TO EXAMINE AND CROSS-EXAMINE  
23 DR. STRAUSS ON THE MERITS OF INTERNATIONAL  
24 MARKETING OF CIGARETTES.  
25 THE COURT: LET'S DO THIS. RIGHT NOW, I  
26 AM GOING TO TAKE THIS AS AN OFFER OF PROOF TO BEGIN  
27 WITH, LET ME HEAR THE QUESTIONS AND THE ANSWERS  
28 THAT MR. PIUZE ELICITED. THEN LET ME MAKE A  
3149

1 JUDGMENT BEYOND THAT AS TO WHETHER OR NOT YOU NEED  
2 TO CROSS-EXAMINE HIM OR WHAT THE SCOPE OF THAT  
3 CROSS SHOULD BE.  
4 MR. CARLTON: CAN I JUST RAISE ONE ISSUE  
5 BEFORE WE GET THERE, WHICH IS THAT THIS MAN WAS  
6 NEVER DESIGNATED AS AN EXPERT HAVING ANYTHING TO DO  
7 WITH MARKETING OF CIGARETTES, EITHER IN THE UNITED  
8 STATES OR OUTSIDE AND A HUGE PORTION OF WHAT HE WAS  
9 DESIGNATED TO DO WAS WITHDRAWN.  
10 THE COURT: WELL, THAT MAY WELL BE THE  
11 END OF IT.  
12 MR. CARLTON: WELL --  
13 THE COURT: HAS HE BEEN QUALIFIED AS AN  
14 EXPERT IN INTERNATIONAL SALES OF CIGARETTES? DOES  
15 HE EXPRESS INTEREST IN INTERNATIONAL HEALTH?  
16 I DON'T KNOW, I JUST -- MY GUT  
17 REACTION IS, I WONDER WHETHER HE'S EVEN QUALIFIED,  
18 FRANKLY.  
19 I KNOW HE'S A HEALTH EXPERT,  
20 MR. CARLTON: MAY I READ THE DESIGNATION  
21 INTO THE RECORD.  
22 THE COURT: NO -- FEEL FREE, GO AHEAD,  
23 THE PORTION.  
24 MR. CARLTON: I WILL READ THE WHOLE  
25 DESIGNATION, YOUR HONOR, AND THEN I WOULD LIKE TO  
26 READ A PORTION OF HIS DEPOSITION WHERE MR. PIUZE  
27 WITHDREW A SUBSTANTIAL PORTION OF IT.  
28 THE COURT: GO AHEAD.  
3150

1 MR. CARLTON: ALL RIGHT.  
2 "DR. STRAUSS MAY TESTIFY  
3 ABOUT THE CAUSAL RELATIONSHIP BETWEEN  
4 SMOKING AND ADENOCARCINOMA OF THE  
5 LUNG."  
6 BY THE WAY, FOR RECORD, I AM  
7 READING THAT FROM THE DESIGNATION.  
8 THE COURT: THANK YOU.

9 MR. CARLTON: (READING)  
10 "ADENOCARCINOMA OF THE LUNG,  
11 THE METASTASIS AND TREATMENTS OF LUNG  
12 CANCER, HE MAY ALSO TESTIFY ABOUT THE  
13 EVOLUTION OF KNOWLEDGE CONCERNING THE  
14 POINT IN TIME ABOUT WHICH THE  
15 CIGARETTE COMPANIES SHOULD HAVE KNOWN  
16 AND/OR DID KNOW ABOUT THE RISK OF  
17 EXPOSURE TO CIGARETTE, LUNG CANCER AND  
18 OTHER DISEASES.  
19 "HE MAY ALSO TESTIFY AS TO  
20 THE NATURE AND EXTENT OF CIGARETTE  
21 EXPOSURE IN THIS CASE, TO THE  
22 ADDICTIVE NATURE OF SMOKING AND THE  
23 DIFFICULTY WHICH PEOPLE, INCLUDING  
24 PLAINTIFF, ENCOUNTER IN THE CESSATION  
25 OF SMOKING, THE DECEPTION OF THE  
26 CIGARETTE INDUSTRY, THE CALCULATED  
27 MANIPULATION OF CIGARETTE DESIGNED TO  
28 START, PROMOTE AND CONTINUE HABITUAL  
3151  
1 USE BY CONSUMERS, THE RISKS SLASH  
2 BENEFITS OF DEFENDANT'S PRODUCTS, THE  
3 FEASIBILITY OF ALTERNATIVE DESIGNS,  
4 THE DEFENDANTS' DECEPTION VIA  
5 CONCEALMENT AND FALSE  
6 MISREPRESENTATIONS REGARDING THE  
7 ADDICTIVE NATURE OF CIGARETTES,  
8 DEFENDANT'S DECEPTION VIA CONCEALMENT  
9 AND FALSE MISREPRESENTATIONS OF THE  
10 RISKS AND MAGNITUDE OF THE RISKS OF  
11 SMOKING CIGARETTES, THE DEFENDANT'S  
12 DECEPTION VIA CONCEALMENT AND  
13 MISREPRESENTATIONS TO THE U.S.  
14 GOVERNMENT, ITS'S VARIOUS BRANCHES,  
15 AGENCIES AND COMMITTEES, INCLUDING BUT  
16 NOT LIMITED TO THE OFFICE OF THE  
17 SURGEON GENERAL, THE UNITED STATES  
18 CONGRESS, FOOD AND DRUG ADMINISTRATION  
19 AND THE FEDERAL TRADE COMMISSION."  
20 THAT WAS THE ORIGINAL DESIGNATION.  
21 AND NOW I WOULD LIKE TO READ YOU A  
22 PORTION OF THE DEPOSITION AT WHICH HIS DESIGNATION  
23 WAS REDUCED.  
24 MR. PIUZE, AND THIS IS PAGE 81 OF  
25 THE DEPOSITION.  
26 "WE HAVE HAD A BRIEF  
27 DISCUSSION OFF THE RECORD. I HAVE  
28 EXPLAINED THAT THE DESIGNATION FOR  
3152  
1 THIS WITNESS MAY BE VERBATIM OF THE  
2 DESIGNATION OF DR. FEINGOLD. I HAVE  
3 ALSO EXPLAINED THAT THIS IS  
4 OVER-INCLUSIVE. HE WILL NOT BE  
5 TESTIFYING ON ALL THESE AREAS. HIS  
6 PRIMARY AREA IS GOING TO BE CAUSATION.  
7 HE WILL TOUCH UPON EVOLUTION AND  
8 KNOWLEDGE WHICH IS WHAT YOU ARE  
9 DISCUSSING NOW. BUT I HAVE INFORMED  
10 COUNSEL AND I AM RESTATING IT FOR THE  
11 RECORD THAT DRS. FEINGOLD AND DOLL ARE  
12 THE PEOPLE THAT WILL BE CARRYING BY  
13 FAR THE LABORING FORM," I PRESUME THAT

14 SHOULD BE "LABORING OAR."  
15 I AM LOOKING AT THE DESIGNATION  
16 NOW. AND AGAIN, I AM READING FROM THE DEPOSITION.  
17 NEXT AREA SAYS, QUOTES:  
18 "HE MAY ALSO TESTIFY AS TO  
19 THE NATURE AND EXTENT OF CIGARETTE  
20 EXPOSURE IN THIS CASE. CLOSE QUOTES.  
21 "I WILL OBSERVE HE HAS NO  
22 PERSONAL KNOWLEDGE OF THAT WHATSOEVER,  
23 TO THE ADDICTIVE NATURE OF SMOKING AND  
24 THE DIFFICULTY WITH WHICH PEOPLE,  
25 INCLUDING PLAINTIFF, ENCOUNTERED IN  
26 THE CESSATION OF SMOKING. THAT'S AN  
27 AREA HE WILL DISCUSS BUT HE IS NOT THE  
28 MAIN PERSON. THAT AS YOU KNOW,  
3153

1 DR. BENOWITZ IS IN HERE FOR ADDICTION  
2 AND SO IS DR. BLINDER."  
3 CONTINUING, "THE DECEPTION  
4 OF THE CIGARETTE INDUSTRY, THE  
5 CALCULATED MANIPULATION OF THE  
6 CIGARETTE, STARTING RIGHT, HERE  
7 HE WILL NOT TESTIFY AT ALL. THE  
8 CALCULATED MANIPULATION OF CIGARETTES  
9 DESIGNED TO START, PROMOTE AND  
10 CONTINUE HABITUAL USE BY CONSUMERS,  
11 THE RISK BENEFITS OF DEFENDANT'S  
12 PRODUCTS, FEASIBILITY OF ALTERNATIVE  
13 DESIGNS, DEFENDANT'S DECEPTION BY  
14 CONCEALMENT AND MISREPRESENTATIONS  
15 REGARDING THE ADDICTIVE NATURE OF ITS  
16 CIGARETTES, DEFENDANT'S DECEPTION BY  
17 CONCEALMENT AND FALSE  
18 MISREPRESENTATIONS OF THE RISK AND  
19 MAGNITUDE OF RISK OF SMOKING  
20 CIGARETTES, DEFENDANT'S DECEPTION BY  
21 CONCEALMENT AND MISREPRESENTATIONS TO  
22 THE U.S. GOVERNMENT, IT'S BRANCHES,  
23 AGENCIES AND COMMITTEES, INCLUDING BUT  
24 NOT LIMITED TO THE SURGEON GENERAL,  
25 CONGRESS, F.D.A., FEDERAL TRADE  
26 COMMISSION."  
27 SO THAT LONG AREA IS OUT OF FOUNDS  
28 FOR HIM.

3154  
1 THERE'S NOTHING, YOUR HONOR, IN  
2 THIS DESIGNATION REMOTELY RELATED TO THE MARKETING  
3 OF CIGARETTES.  
4 AND I WOULD ALSO SUBMIT THAT BASED  
5 UPON WHAT HE HAS ALREADY TESTIFIED TO ABOUT HIS  
6 BACKGROUND AND EXPERIENCE, HE HAS NO EXPERTISE IN  
7 THAT AREA.  
8 THE COURT: MAKE YOUR OFFER OF PROOF.  
9  
10  
11 GARY STRAUSS,  
12 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
13 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
14 AND TESTIFIED FURTHER AS FOLLOWS:  
15 Q BY MR. PIUZE: THERE'S NO JURY  
16 HERE, SO LET'S KEEP THAT IN MIND. WE WANT TO  
17 STREAMLINE THIS FOR THE COURT.  
18 FIRST OF ALL, DO YOU FEEL YOU ARE

19 QUALIFIED TO TALK ABOUT THE FACT THAT AS CIGARETTE  
20 SALES HAVE DECLINED IN THIS COUNTRY THEY HAVE GONE  
21 UP IN OTHER COUNTRIES?

22 A. I AM KNOWLEDGEABLE ABOUT IT.

23 PROBABLY I AM NOT SURE I AM AN EXPERT ON IT, BUT I  
24 HAVE TAKEN A TOBACCO COURSE. I AM VERY INTERESTED  
25 IN THIS WHOLE AREA AND IT'S SOMETHING I FOLLOW  
26 CLOSELY.

27 Q. LET'S HEAR WHAT IT IS. I DON'T  
28 KNOW WHERE YOU ARE DRAWING THE LINE BETWEEN

3155

1 KNOWLEDGEABLE AND EXPERT.

2 A. RIGHT.

3 Q. AND MAYBE IT IS IN THE EYE OF THE  
4 BEHOLDER. LET'S HEAR ABOUT YOUR KNOWLEDGEABILITY?

5 A. YES. IT WAS WHAT I HAVE BEEN  
6 TAUGHT AND WHAT I HAVE READ IS THAT THERE HAS  
7 CLEARLY BEEN A DOUBLE STANDARD WITH REGARD TO  
8 REGULATIONS THAT THE TOBACCO INDUSTRY HAS NEEDED TO  
9 FOLLOW WITH REGARD TO MARKETING OF CIGARETTES IN  
10 THIS COUNTRY AND IN THE THIRD WORLD AND OUTSIDE  
11 THIS COUNTRY.

12 U.S., IN THE UNITED STATES, TOBACCO  
13 COMPANIES ARE NOT ALLOWED TO SORT OF MARKET ON  
14 TELEVISION OR RADIOS, CANNOT MARKET WHERE CHILDREN  
15 HAVE ACCESS, ALL OF THOSE REGULATIONS ARE ACTUALLY  
16 NOT IN EFFECT. TOBACCO INDUSTRY IS SPECIFICALLY  
17 EXEMPTED FROM THOSE REGULATIONS OUTSIDE THE  
18 COUNTRY.

19 AS YOU SAID EARLIER, YOU KNOW,  
20 THERE HAS BEEN A SLIPPING MARKET. YOU KNOW, THE  
21 PEOPLE DIE FROM SMOKING-RELATED DISEASE, ADULTS  
22 HAVE ACTUALLY STOPPED SMOKING TO A CONSIDERABLE  
23 EXTENT, SO THERE HAS BEEN A SLIPPING MARKET FOR  
24 TOBACCO PRODUCT IN THIS COUNTRY, CIGARETTES IN THIS  
25 COUNTRY.

26 AND THE TOBACCO COMPANIES, IN  
27 GENERAL, AND PHILIP MORRIS, IN PARTICULAR, HAS  
28 COMPENSATED FOR THAT BY EXPORTING TO OTHER PARTS OF  
3156

1 THE WORLD.

2 AS THAT JAMA ARTICLE BY JUDITH  
3 MACKAY --

4 THE COURT: SIR, MAY I ASK YOU SOMETHING.  
5 WHAT DO YOU MEAN BY A DOUBLE STANDARD? WHAT DO YOU  
6 MEAN BY A DOUBLE STANDARD.

7 THE WITNESS: THE DOUBLE STANDARD IS  
8 HEALTH WARNINGS ARE NECESSARY ON TOBACCO PRODUCTS  
9 IN THIS COUNTRY.

10 THE COURT: LET ME ASK YOU DIFFERENTLY.  
11 BY WHOSE STANDARD? YOUR STANDARD? THE UNITED  
12 STATES' STANDARD? A FOREIGN COUNTRY'S STANDARD?  
13 WHO'S STANDARD IS DOUBLE IN YOUR MIND?

14 THE WITNESS: THE DOUBLE STANDARD REFERS  
15 TO WHAT STANDARDS THE TOBACCO INDUSTRY HAS TO  
16 FOLLOW BY REGULATION IN THIS COUNTRY VERSUS HOW  
17 THEY ARE ABLE TO BEHAVE WITH REGARD TO THEIR  
18 MARKETING OF THEIR PRODUCT OUTSIDE THIS COUNTRY.

19 THE COURT: LET ME PUT IT DIFFERENTLY.  
20 FOR SOMEONE TO HAVE, USUALLY WHEN  
21 WE TALK ABOUT SOMEBODY HAVING A DOUBLE STANDARD, WE  
22 SAY SOMEBODY, SOME PERSON, SOME ENTITY HAS TWO  
23 STANDARDS WHICH THEY APPLY, ONE TO ONE GROUP OF



24 INDIVIDUALS AND ONE TO ANOTHER GROUP OF  
25 INDIVIDUALS.  
26 THE WITNESS: YES.  
27 THE COURT: AND THAT IMPLIED THERE IS  
28 SOMETHING WRONG ABOUT THAT, IT SHOULDN'T BE DONE.  
3157  
1 THE WITNESS: OKAY.  
2 THE COURT: SO LET ME ASK YOU, BY WHOSE  
3 STANDARD, THE WORLD HEALTH ORGANIZATION, THE UNITED  
4 NATIONS, SOME PARTICULAR COUNTRY, THE UNITED STATES  
5 OF AMERICA, THE STATE OF CALIFORNIA? WHO'S  
6 STANDARD IS DOUBLE?  
7 THE WITNESS: I AM NOT SURE I AM  
8 ANSWERING YOUR QUESTION, BUT I AM GOING TO TRY TO.  
9 THERE ARE -- THE TOBACCO INDUSTRY  
10 IS APPROPRIATELY HEAVILY REGULATED WITH REGARD TO  
11 THEIR ABILITY TO MARKET THEIR PRODUCT, PARTICULARLY  
12 TO MINORS IN THIS COUNTRY.  
13 THAT IS A MATTER OF LAW.  
14 THE COURT: SO YOU ARE SAYING IT IS BY  
15 UNITED STATES' STANDARDS THAT THERE'S A DOUBLE  
16 STANDARD?  
17 THE WITNESS: BY UNITED STATES'  
18 STANDARDS, THE STANDARDS THAT TOBACCO INDUSTRY  
19 NEEDS TO OBEY WITH REGARD TO THEIR MARKETING OF  
20 PRODUCT IN THE UNITED STATES DOES NOT APPLY TO  
21 THEIR MARKETING PRODUCTS OUTSIDE THE UNITED STATES  
22 AND THAT PARTICULARLY RELATES TO THE THIRD WORLD.  
23 THE COURT: OKAY. I AM SORRY, I  
24 INTERRUPTED.  
25 MR. PIUZE: DON'T BE SORRY. YOU ARE THE  
26 JUDGE.  
27 Q BY MR. PIUZE: THE DOUBLE STANDARD  
28 IS THE STANDARDS ON THE TOBACCO INDUSTRY; RIGHT?  
3158  
1 A. YES.  
2 Q. IT ISN'T AN OUTSIDE STANDARD, ITS  
3 THEIR STANDARD?  
4 A. YES. AND AS, YOU KNOW, HAS BEEN  
5 MOST ELOQUENTLY STATED, FAR MORE ELOQUENTLY THAN I  
6 WILL EVER STATE BY C. EVERETT KOOP, THE FORMER  
7 SURGEON GENERAL OF THE UNITED STATES, SOMEBODY I  
8 HAVE HAD THE PRIVILEGE OF MEETING SEVERAL TIMES,  
9 YOU KNOW, THAT THE TOBACCO INDUSTRY HAS, IF YOU  
10 WOULD LIKE, I HAVE THE, YOU KNOW, TWO ARTICLES FROM  
11 JAMA, SO I CAN ACTUALLY QUOTE IT.  
12 BUT, YOU KNOW, THEY HAVE FAILED TO  
13 ACT RESPONSIBLY IN THE UNITED STATES WHERE THE LAW  
14 MANDATES THAT THEY HAVE TO FOLLOW A CERTAIN SET OF  
15 STANDARDS. WHILE THEY RELUCTANTLY HAVE DONE SO, IN  
16 THE THIRD WORLD, YOU KNOW, THEY DO WHATEVER THEY  
17 WANT AND THEY MARKET TO CHILDREN, THEY EITHER, IN  
18 SOME COUNTRIES, THERE ARE NO HEALTH WARNINGS OR  
19 CERTAINLY THE HEALTH WARNINGS THAT DO EXIST ARE  
20 DRAMATICALLY WATERED DOWN COMPARED TO THE HEALTH  
21 WARNINGS THAT EXIST ON THIS COUNTRY. I AM NOT SURE  
22 THEY ARE REALLY EFFECTIVE, BUT NONETHELESS, THEY  
23 ARE A MATTER OF LAW IN THIS COUNTRY.  
24 Q. I WILL TELL YOU WHAT, IN ORDER FOR  
25 ME TO STREAMLINE THE PROCESS, AND I HAVE GOT MY EYE  
26 ON THE CLOCK AT 20 PAST 4:00, HAVE YOU READ,  
27 REVIEWED AND RELIED ON AN ARTICLE FROM THE "JOURNAL  
28 OF THE AMERICAN MEDICAL ASSOCIATION" BY AN AUTHOR

3159

1 NAMED MACKAY, M-A-C-K-A-Y? DID I SPELL THAT RIGHT?

2 A. YES.

3 Q. DO YOU HAVE THAT THERE?

4 A. I HAVE IT RIGHT HERE.

5 Q. I'D LIKE TO MARK IT AS A COURT'S

6 EXHIBIT, MAKE A COPY, MARK IT AS A COURT EXHIBIT,

7 AS YOUR HONOR, DO YOU HAVE A PREFERENCE FOR A

8 NUMBER HERE?

9 THE COURT: I DON'T, AND I DON'T HAVE A

10 NUMBER.

11 MR. PIUZE: HOW ABOUT 5000, IS THAT A

12 SAFE NUMBER, GENTLEMEN?

13 10,000?

14 MR. LEITER: YOU ARE ASKING THE WRONG

15 PEOPLE.

16 MR. PIUZE: I THINK 10,000 IS A SAFE

17 NUMBER.

18 MR. CARLTON: 10,000 IS OKAY, I GUESS.

19 MR. PIUZE: AND LEST ANYONE THINK I AM

20 BEING FACETIOUS, THEY GOT OVER 5,000 EXHIBITS OVER

21 THERE. LET'S CALL IT 10,000.

22

23 \* (EXHIBIT 10,000, MACKAY

24 ARTICLE, MARKED FOR I.D.)

25

26 Q BY MR. PIUZE: HAVE YOU READ THAT?

27 A. I HAVE READ IT.

28 Q. HAVE YOU RELIED UPON THIS?

3160

1 A. I HAVE RELIED UPON IT. THOSE, IT

2 FRANKLY, SIMPLY, REAFFIRMS VERY ELOQUENTLY WHAT I

3 HAD ALREADY BELIEVED AND READ ELSEWHERE.

4 Q. AND THAT'S AN IMPORTANT POINT

5 BECAUSE I DON'T WANT YOU TO JUST REPEAT THIS, YOU

6 HAD THESE OPINIONS AHEAD OF TIME?

7 A. YES.

8 Q. AS SMOKING RATES HAVE DECREASED

9 HERE, HAVE THEY GONE UP ABROAD, QUESTION MARK?

10 A. YES, DRAMATICALLY SO.

11 Q. HAS PHILIP MORRIS INCREASED ITS

12 SALES ABROAD BY ALMOST DOUBLE?

13 A. YES.

14 Q. HAVE LUNG CANCER RATES GONE UP

15 ABROAD WITH THE INCREASE IN SMOKING RATES ABROAD?

16 A. YES.

17 Q. HAVE SMOKING RELATED DEATHS GONE UP

18 ABROAD WITH THE INCREASE IN CIGARETTE SALES BY

19 AMERICAN COMPANIES AND PHILIP MORRIS SPECIFICALLY

20 ABROAD?

21 A. ABSOLUTELY.

22 Q. ARE THERE -- WHAT ARE THE CURRENT

23 ESTIMATES RIGHT NOW, THIS IS ALREADY ON THE RECORD,

24 BUT LET'S DO IT AGAIN, WHAT ARE THE CURRENT

25 ESTIMATES RIGHT NOW FOR HOW MANY PEOPLE ARE DYING

26 OF LUNG CANCER AROUND THE WORLD NOW?

27 A. 1.3 MILLION LUNG CANCER DEATHS IN

28 THE YEAR 2000.

3161

1 Q. DOES THE WORLD HEALTH ORGANIZATION

2 PROJECT OUT THESE FIGURES?

3 A. YES. I HAVE SEEN, OVERALL, I HAVE

4 SEEN PROJECTIONS IN THE WORLD HEALTH ORGANIZATION

5 THAT ACTUALLY TALKS ABOUT TOTAL SMOKING RELATED  
6 DEATHS IN THE FUTURE AND ACTUALLY HAVE NOT  
7 SPECIFICALLY SEEN THEIR PROJECTIONS FOR LUNG CANCER  
8 DEATHS.

9 Q. ACCORDING TO THE WORLD HEALTH  
10 ORGANIZATION, IN 25 YEARS, WILL ONLY 15 PERCENT OF  
11 THE SMOKERS BE IN THE DEVELOPED COUNTRIES?

12 A. YES.

13 Q. WILL THE OTHER 85 PERCENT BE IN THE  
14 UNDEVELOPED COUNTRIES?

15 A. THIRD WORLD, YES.

16 Q. DOES THE WORLD HEALTH ORGANIZATION  
17 PREDICT TEN MILLION PEOPLE DYING ANNUALLY FROM  
18 TOBACCO RELATED DISEASES?

19 A. YES.

20 Q. IN 25 TO 30 YEARS?

21 A. YES. THAT IS THEIR PROJECTION, IF  
22 SMOKING PATTERNS DO NOT CHANGE.

23 Q. WILL 70 PERCENT OF THOSE BE IN THE  
24 DEVELOPING COUNTRIES?

25 A. YES.

26 MR. PIUZE: YOUR HONOR, THE REST OF IT  
27 GOES OVER THAT LINE WHERE THERE WAS A GOOD DOSE OF  
28 POLITICS INVOLVED, SO I AM GOING TO STOP THERE.

3162

1 THE COURT: ALL RIGHT.

2 Q BY MR. PIUZE: ARE THESE YOUR  
3 OPINIONS, INDEPENDENT OF THE JAMA ARTICLE THAT WE  
4 HAVE GOT MARKED AS 10,000?

5 A. THESE ARE MY OPINIONS.

6 Q. BY THE WAY, DO YOU HAVE A SECOND  
7 JAMA ARTICLE THERE THAT WAS WRITTEN BY COOP AND --

8 A. DAVID KESSLER AND GEORGE LYNBERG,  
9 THE FORMER EDITOR IN CHIEF OF THE JOURNAL, THE  
10 AMERICAN MEDICAL ASSOCIATION.

11 Q. AND IS KESSLER ANOTHER, IS THE  
12 FORMER HEAD OF THE F.D.A.?

13 A. YES.

14 Q. LET'S HAVE THAT AS 5001.

15 THANK YOU, YOUR HONOR. I GOT NO  
16 FURTHER QUESTIONS.

17 THE COURT: ALL RIGHT.

18 THE FIRST DOCUMENT WAS, WHAT?

19 MR. PIUZE: EXCUSE ME, 10,000 AND THE  
20 SECOND ONE WAS 10,001.

21 THE COURT: 10,001.

22

23 \* (EXHIBIT 10,001, ARTICLE,  
24 MARKED FOR I.D.)

25

26 THE COURT: MR. PIUZE, PERHAPS IF YOU  
27 WANT TO ASK ANOTHER QUESTION OF THE WITNESS YOU  
28 CAN, OR YOU CAN OFFER IT TO ME. WHAT IS THIS

3163

1 WITNESS'S RELEVANT OPINION IN THIS AREA.

2 MR. PIUZE: THAT WHILE PHILIP MORRIS  
3 SPECIFICALLY, WELL, LET'S STICK WITH PHILIP MORRIS,  
4 WHILE PHILIP MORRIS IN THIS COUNTRY, FOR PUBLIC  
5 CONSUMPTION, IS SAYING, GEE, WE ARE NOT TARGETING  
6 MINORS, GEE, WE ARE SELLING LESS CIGARETTES, GEE,  
7 EVERYONE IS AWARE OF THE LUNG CANCER RISKS, SO IT  
8 IS EVERY MAN, WOMAN FOR HIMSELF OR HERSELF, THEY  
9 TAKE THE EXACT OPPOSITE TRACK WITH UNSUSPECTING,

10 UNKNOWNING POTENTIAL VICTIMS, FOR PROFIT. THAT'S  
11 IT.  
12 THE COURT: WELL, THE DATA THAT WAS READ  
13 TO THE COURT, WHILE IT IS DISTURBING, IF IT IS  
14 TRUE, AND WHILE THE ASSERTION THAT HAS JUST BEEN  
15 MADE BY WAY OF AN OFFER AND AS TO AN OPINION, IF IT  
16 WERE TRUE, WOULD CERTAINLY QUALIFY AS EVIDENCE OF  
17 REPREHENSIBLALITY, NO QUESTION ABOUT THAT, IT  
18 APPEARS TO THIS COURT THAT, FIRST OF ALL, THIS  
19 TESTIMONY IS WAY BEYOND THE SCOPE OF THE EVIDENCE  
20 IN THIS TRIAL.  
21 IF WE WERE TO GO INTO THIS AREA,  
22 AND TRULY TRY THAT PORTION OF THE CASE, IT WOULD BE  
23 WAY BEYOND THE SCOPE OF THIS COURT'S UNDERSTANDING  
24 OF WHAT THIS CASE IS ABOUT.  
25 IT IS -- IT APPEARS TO THE COURT,  
26 AT LEAST, AND I MAY BE WRONG ABOUT THIS, BUT THE  
27 COURT HAS TO SIT HERE IN SOME SENSE IN JUDGMENT OF  
28 ITS EXPERT WITNESSES AND THEIR QUALIFICATIONS.

3164

1 WHETHER OR NOT THEY ARE TESTIFYING WITHIN THEIR  
2 QUALIFICATION, I AM, FRANKLY, NOT SATISFIED THAT  
3 THIS IS WITHIN THIS EXPERT'S REALM OF EXPERTISE. I  
4 THINK HE IS OUT ON THE EDGE OF HIS EXPERTISE,  
5 FRANKLY. AND I WAS NOT AT ALL SATISFIED BY HIS  
6 ANSWER TO THE QUESTION ABOUT DOUBLE STANDARDS.  
7 AND I THINK THAT QUESTION REALLY  
8 POINTS OUT THE WHOLE PROBLEM, THE CONUNDRUM THAT WE  
9 GET INTO IF WE GOT INTO THIS AREA.  
10 AND, FINALLY, I THINK THERE WAS A  
11 GOOD ARGUMENT HERE ON THE OTHER SIDE, A TECHNICAL  
12 ARGUMENT, ALTHOUGH I AM NOT REALLY RESTING MY  
13 DECISION ON THAT, THAT IT WAS BEYOND THE SCOPE OF  
14 HIS DESIGNATION, THIS TESTIMONY IS BEYOND THE SCOPE  
15 OF HIS DESIGNATION, AND IT APPEARS TO ME, PERHAPS,  
16 TAKES THE DEFENSE BY SURPRISE.  
17 IT DOESN'T APPEAR TO ME THIS IS AN  
18 AREA THAT WAS INQUIRED INTO OR CAME OUT AT ALL IN  
19 THE DEPOSITION. I MAY BE WRONG ABOUT THAT, BECAUSE  
20 I HAVE NOT BEEN TOLD THAT. BUT I AM JUST ASSUMING  
21 THAT.  
22 IS THAT A CORRECT ASSUMPTION?  
23 MR. LEITER: THAT IS CORRECT.  
24 THE COURT: IN THAT EVENT, WE DO HAVE A  
25 RECORD MADE OF IT. THAT'S SUFFICIENT, I THINK,  
26 UNDER THE CIRCUMSTANCES. AND THAT WILL BE THE  
27 RULING OF THE COURT. THE COURT WILL NOT PERMIT  
28 THIS EVIDENCE.

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1 MR. PIUZE: THANK YOU FOR YOUR TIME.  
2 MR. LEITER: THANK YOU, YOUR HONOR.  
3  
4 (AT THIS TIME, THE PROCEEDINGS  
5 IN THE ABOVE-ENTITLED MATTER  
6 WERE CONTINUED TO FRIDAY, APRIL  
7 20, 2001 AT 9:00 A.M.)

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